

Commonwealth of Massachusetts
ATTORNEY-GENERAL'S REPORT

1912

The Commonwealth of Massachusetts.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE

YEAR ENDING JANUARY 15, 1913.



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1913.

The Commonwealth of Massachusetts.

DEPARTMENT OF THE ATTORNEY-GENERAL,
BOSTON, Jan. 15, 1913.

To the Honorable Senate and House of Representatives.

I have the honor to transmit herewith my report for the year ending this day.

Very respectfully,

JAMES M. SWIFT,
Attorney-General.

The Commonwealth of Massachusetts.

DEPARTMENT OF THE ATTORNEY-GENERAL,
State House.

Attorney-General.

JAMES M. SWIFT.

Assistants.

FREDERIC B. GREENHALGE.

ANDREW MARSHALL.

HENRY M. HUTCHINGS.

WALTER A. POWERS.

Engineer of Grade Crossings.

HENRY W. HAYES.

Chief Clerk.

LOUIS H. FREESE.

STATEMENT OF APPROPRIATION AND EXPENDITURES.

Appropriation for 1912, \$45,000 00

Expenditures.

For law library,	499 88
For salaries of assistants,	13,873 39
For expert services,	511 33
For clerks,	3,788 67
For office stenographers,	2,500 00
Telephone operator,	472 00
For messenger,	1,200 00

For expenses in the abolition of grade crossings:—

Salary of engineer,	\$3,288 15
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Other expenses incidental thereto,	878 00
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4,166 15

For advertising unclaimed deposits,	4,487 31
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For office expenses,	2,617 14
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For court expenses,	6,423 73
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Total expenditures,	\$40,539 60
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Costs collected,	1,914 31
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Net expenditures,	\$38,625 29
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The Commonwealth of Massachusetts.

DEPARTMENT OF THE ATTORNEY-GENERAL,
BOSTON, Jan. 15, 1913.

To the Honorable Senate and House of Representatives.

In compliance with Revised Laws, chapter 7, section 8, I submit my report for the year ending this day.

The cases requiring the attention of this department during the year, to the number of 6,793, are tabulated below:—

Corporate franchise tax cases,	587
Extradition and interstate rendition,	104
Grade crossings, petitions for abolition of,	99
Indictments for murder,	29
Inventories and appraisals,	233
Land Court petitions,	11
Land-damage cases arising from the taking of land by the Harbor and Land Commission,	4
Land-damage cases arising from the taking of land by the Charles River Basin Commission,	23
Land-damage cases arising from the taking of land by the Massa- chusetts Highway Commission,	15
Land-damage cases arising from the taking of land by the Met- ropolitan Park Commission,	1
Land-damage cases arising from the taking of land by the Met- ropolitan Water and Sewerage Board,	14
Land-damage cases arising from the taking of land by the State Board of Insanity,	7
Land-damage cases arising from the taking of land by the Mt. Everett Reservation Commission,	1
Miscellaneous cases arising from the work of the above-named commissions,	31
Miscellaneous cases,	460
Petitions for instructions under inheritance tax laws,	28
Public charitable trusts,	140
Settlement cases for support of persons in State Hospitals,	19
All other cases not enumerated above, which include suits to re- quire the filing of returns by corporations and individuals and the collection of money due the Commonwealth,	4,987

CAPITAL CASES.

Indictments for murder pending at the date of the last annual report have been disposed of as follows:—

CHARLES ALESANDO, indicted in Hampden County, December, 1911, for the murder of Dominic Salvatore, at Russell, on June 24, 1911. He was arraigned Dec. 26, 1911, and pleaded not guilty. Richard J. Morrissey, Esq., was assigned by the court as counsel for the defendant. The defendant was ordered to recognize in the sum of \$1,000 for appearance from time to time. The case was in charge of District Attorney Christopher T. Callahan.

HARRY H. BUTTS, indicted in Suffolk County, July, 1911, for the murder of Robert Williamson, at Boston, on June 21, 1911. He was arraigned July 12, 1911, and pleaded not guilty. Joseph A. Dennison, Esq., and David E. Crawford, Esq., were assigned by the court as counsel for the defendant. The defendant later retracted his former plea, and pleaded guilty to manslaughter. This plea was accepted by the Commonwealth, and the defendant was sentenced to State Prison for a term not exceeding fourteen nor less than twelve years. The case was in charge of District Attorney Joseph C. Pelletier.

PETER CASSETTI, indicted in Norfolk County, December, 1911, for the murder of Nicholas Cassetti, at Weymouth, on Oct. 1, 1911. He was arraigned Dec. 22, 1911, and pleaded not guilty. John E. Crowley, Esq., was assigned by the court as counsel for the defendant. On April 11, 1912, the defendant retracted his former plan, and pleaded guilty to manslaughter. This plea was accepted by the Commonwealth, and the defendant was sentenced to State Prison for a term not exceeding nine nor less than seven years. The case was in charge of District Attorney Albert F. Barker.

HARRY MARSHALL and LENA CUSUMANO, indicted in Plymouth County, October, 1910, for the murder of Fran-

cisco Cusumano, at Hull, on Sept. 18, 1910. They were arraigned Nov. 29, 1910, and pleaded not guilty. Thomas J. Grady, Esq., and William J. Coughlan, Esq., were assigned by the court as counsel for the defendants. In February, 1911, the defendants were tried by a jury before Schofield, J. The result was a verdict of guilty of murder in the first degree. Motion of defendants for a new trial was denied, and the defendants' exceptions were overruled by the Supreme Judicial Court. The defendants were thereupon sentenced to death by electrocution during the week beginning June 2, 1912. In the case of Lena Cusumano this sentence was commuted to imprisonment for life by the Governor, by and with the advice of the Council. In the case of Harry Marshall sentence was executed June 6, 1912. The case was in charge of District Attorney Albert F. Barker.

CHESTER S. JORDAN, indicted in Middlesex County, March, 1909, for the murder of Honora C. Jordan, at Somerville, Sept. 1, 1908. He was arraigned April 15, 1909, and pleaded not guilty. Charles W. Bartlett, Esq., Harvey H. Pratt, Esq., and Jeremiah H. Sullivan, Esq., were assigned by the court as counsel for the defendant. In April, 1909, the defendant was tried by a jury before Stevens and Bell, JJ. The result was a verdict of guilty of murder in the first degree. The defendant's motion for a new trial was denied, and exceptions were overruled by the Supreme Judicial Court. The defendant was thereupon sentenced to death by electrocution during the week beginning March 12, 1911. The case was taken to the Supreme Court of the United States on writ of error. June 19, 1912, the writ of error was dismissed, and the defendant remanded to the Superior Court for sentence. June 21, 1912, the defendant was sentenced to death by electrocution during the week beginning Sept. 22, 1912, which sentence was executed Sept. 24, 1912. The case was in charge of District Attorney John J. Higgins.

SILAS N. PHELPS, indicted in Franklin County, July, 1910, for the murder of Emmet F. Haskins, at Monroe, on June 12, 1910. He was arraigned July 12, 1910, and rear-

raigned July 21, 1910, and pleaded not guilty. William A. Davenport, Esq., and Harry E. Ward, Esq., were assigned by the court as counsel for the defendant. In November, 1910, the defendant was tried by a jury before Schofield, J. The result was a verdict of guilty of murder in the first degree. The defendant's exceptions were overruled, and the defendant entered an appeal from an order overruling a motion in arrest of judgment, which order was affirmed by the Supreme Judicial Court, Oct. 20, 1911. On Oct. 25, 1911, the defendant was sentenced to death by electrocution during the week beginning Dec. 31, 1911. An appeal from this sentence was dismissed and the sentence affirmed by the Supreme Judicial Court, Dec. 18, 1911; which sentence was executed Jan. 26, 1912. The case was in charge of District Attorney Richard W. Irwin.

CLARENCE V. T. RICHESON, indicted in Suffolk County, October, 1911, for the murder of Avis W. Linnell, at Boston, on Oct. 14, 1911. He was arraigned Nov. 13, 1911, and pleaded not guilty. William A. Morse, Esq., and Philip R. Dunbar, Esq., were assigned by the court as counsel for the defendant. The defendant later retracted his former plea, and pleaded guilty to murder in the first degree. This plea was accepted by the Commonwealth, and the defendant was sentenced to death by electrocution during the week beginning May 19, 1912, which sentence was executed on May 21, 1912. The case was in charge of District Attorney Joseph C. Pelletier.

SAVERIO SPANO, indicted in Norfolk County, December, 1911, for the murder of Guiseppe Rucher, at Quincy, on Dec. 3, 1911. He was arraigned Dec. 22, 1911, and pleaded not guilty. Henry T. Richardson, Esq., was assigned by the court as counsel for the defendant. In April, 1912, the defendant was tried by a jury before Quinn, J. The result was a verdict of guilty of manslaughter. The defendant was thereupon sentenced to State Prison for a term not exceeding twelve nor less than ten years. The case was in charge of District Attorney Albert F. Barker.

BERTRAM G. SPENCER, indicted in Hampden County, May, 1910, for the murder of Martha B. Blackstone, at Springfield, on March 31, 1910. He was arraigned May 16, 1910, and pleaded not guilty. R. P. Stapleton, Esq., and C. L. Young, Esq., were assigned by the court as counsel for the defendant. On Sept. 17, 1910, the defendant was committed to the Bridgewater State Hospital for observation. In November, 1911, he was tried by a jury before Crosby, J., the trial being conducted by Attorney-General James M. Swift, assisted by the district attorney. The result was a verdict of guilty of murder in the first degree. The defendant's motions for a new trial were denied, and exceptions were overruled by the Supreme Judicial Court. The defendant was thereupon sentenced to death by electrocution during the week beginning Sept. 15, 1912, which sentence was executed Sept. 17, 1912. The case was in charge of District Attorney Christopher T. Callahan.

ANNIE TATOSKY, indicted in Plymouth County, June, 1911, for the murder of an infant child, at Abington, on May 3, 1911. She was arraigned June 14, 1911, and pleaded not guilty. Feb. 28, 1912, the defendant pleaded guilty to the third count of the indictment, which charged concealment of the death of said infant child. This plea was accepted by the Commonwealth, and the defendant was sentenced to the House of Correction for one year. The case was in charge of District Attorney Albert F. Barker.

Indictments for murder found since the date of the last annual report have been disposed of as follows: —

JOSEPH CARUSO, indicted in Essex County, January, 1912, for the murder of Anna Lo Pezzi, at Lawrence, on Jan. 29, 1912. He was arraigned May 16, 1912, and pleaded not guilty. James H. Sisk, Esq., was assigned by the court as counsel for the defendant. In September, 1912, the defendant was tried by a jury before Quinn, J. The result was a verdict of not guilty. The case was in charge of District Attorney Henry C. Attwill.

ANTONIO GIANNETTI, indicted in Essex County, April, 1912, for the murder of Carmella Giannetti, at Saugus, on Sept. 15, 1911. He was arraigned May 7, 1912, and pleaded guilty to murder in the second degree. This plea was accepted by the Commonwealth, and the defendant was sentenced to State Prison for life. F. M. Zottoli, Esq., was assigned by the court as counsel for the defendant. The case was in charge of District Attorney Henry C. Attwill.

LEWIS KEYES, indicted in Berkshire County, January, 1912, for the murder of Ernest Hays, at Washington, on Nov. 4, 1911. He was arraigned Jan. 15, 1912, and pleaded not guilty. P. J. Moore, Esq., was assigned by the court as counsel for the defendant. On Jan. 19, 1912, the defendant retracted his former plea, and pleaded guilty to murder in the second degree. This plea was accepted by the Commonwealth, and the defendant was sentenced to State Prison for life. The case was in charge of District Attorney Christopher T. Callahan.

GUISEPPE LACARUBA, indicted in Suffolk County, August, 1912, for the murder of Paolo DiCologero, at Boston, on June 30, 1912. He was arraigned Aug. 12, 1912, and pleaded not guilty. Thomas J. Grady, Esq., was assigned by the court as counsel for the defendant. Sept. 16, 1912, so much of the indictment as charged murder in the first degree was *not prossed*, leaving it to stand for murder in the second degree, and the defendant was tried by a jury before Raymond, J. The result was a verdict of guilty of murder in the second degree, and the defendant was sentenced to State Prison for life. The case was in charge of District Attorney Joseph C. Pelletier.

ELLA E. LIBBEY, indicted in Middlesex County, June, 1912, for the murder of her illegitimate child, at Everett, on May 2, 1912. She was arraigned June 17, 1912, and pleaded not guilty. C. S. Warshauer, Esq., was assigned by the court as counsel for the defendant. On June 20, 1912, the defendant retracted her former plea, and pleaded guilty

to murder in the second degree. This plea was accepted by the Commonwealth, and the defendant was thereupon sentenced to the Reformatory for Women. The case was in charge of District Attorney John J. Higgins.

FADLO MALLAK, indicted in Berkshire County, January, 1912, for the murder of George E. Hoyt, at Adams, on July 22, 1911. Sept. 9, 1911, the defendant was adjudged insane and was committed to the State Farm at Bridgewater. The case was in charge of District Attorney Christopher T. Callahan.

EMMA E. MOOSHIAN, indicted in Essex County, January, 1912, for the murder of Simon Chiligerian, at Haverhill, on Dec. 5, 1911. She was arraigned Jan. 23, 1912, and pleaded guilty to murder in the second degree. This plea was accepted by the Commonwealth, and the defendant was sentenced to the Reformatory for Women. James H. Sisk, Esq., and W. Scott Peters, Esq., were assigned by the court as counsel for the defendant. The case was in charge of District Attorney Henry C. Attwill.

RAFFAELE PALMA, indicted in Suffolk County, February, 1912, for the murder of Giovanni Megna, at Boston, on Jan. 7, 1912. He was arraigned Feb. 19, 1912, and pleaded not guilty. Thomas J. Grady, Esq., was assigned by the court as counsel for the defendant. In April, 1912, the defendant was tried by a jury before Chase, J., and the result was a verdict of guilty of manslaughter. The defendant was thereupon sentenced to State Prison for a term not exceeding twelve nor less than eight years. The case was in charge of District Attorney Joseph C. Pelletier.

ARTHUR PHANEUF, indicted in Bristol County, February, 1912, for the murder of Delia Phaneuf, at Fall River, on Jan. 27, 1912. He was arraigned June 5, 1912, and pleaded guilty to murder in the second degree. This plea was accepted by the Commonwealth, and the defendant was sentenced to State Prison for life. Edward Higginson, Esq.,

was assigned by the court as counsel for the defendant. The case was in charge of District Attorney Joseph T. Kenney.

LUIGI PRISCO, indicted in Suffolk County, March, 1912, for the murder of George Andrews, at Boston, on Feb. 22, 1912. He was arraigned May 20, 1912, and pleaded guilty to manslaughter. This plea was accepted by the Commonwealth, and the defendant was sentenced to State Prison for a term not exceeding twenty nor less than fifteen years. Jeremiah S. Sullivan, Esq., and Frank M. Prisco, Esq., were assigned by the court as counsel for the defendant. The case was in charge of District Attorney Joseph C. Pelletier.

FRANK E. RYAN, indicted in Middlesex County, January, 1912, for the murder of Georgianna M. L. Ryan, at Somerville, on Dec. 26, 1911. He was arraigned Jan. 10, 1912, and pleaded not guilty. Thomas F. Vahey, Esq., was assigned by the court as counsel. The defendant later retracted his former plea, and pleaded guilty to murder in the second degree. This plea was accepted by the Commonwealth, and the defendant was sentenced to State Prison for life. The case was in charge of District Attorney John J. Higgins.

ROCCO SALOMONE, indicted in Suffolk County, March, 1912, for the murder of Guiseppe Napolitano, at Boston, on Feb. 9, 1912. He was arraigned April 6, 1912, and pleaded not guilty. Frank M. Zottoli, Esq., was assigned by the court as counsel for the defendant. In April, 1912, the defendant was tried by a jury before Chase, J. The result was a verdict of guilty of murder in the second degree, and the defendant was sentenced to State Prison for life. The case was in charge of District Attorney Joseph C. Pelletier.

The following indictments for murder are now pending:—

DOMENICO BENINATO, indicted in Middlesex County, September, 1912, for the murder of Giovannina Natoli, at Waltham, on Nov. 21, 1911. He was arraigned Nov. 14, 1912,

and pleaded not guilty. John J. Mitchell, Esq., was assigned by the court as counsel for the defendant. No further action has been taken in this case. The case is in charge of District Attorney John J. Higgins.

STEFAN BORASKY and ANTONE KOLEK, indicted in Hampden County, December, 1911, for the murder of Rose Aman-sky, at Granville, on Sept. 27, 1911. They were arraigned May 20, 1912, and pleaded not guilty. Joseph F. Carmody, Esq., was assigned by the court as counsel for the defendants. In June, 1912, the defendants were tried by a jury before King, J. The result was a verdict of guilty of murder in the first degree. The motion of the defendants for a new trial was denied. Aug. 1, 1912, suggestion of the death of the defendant Antone Kolek was filed. The exceptions of the defendant Stefan Borasky are now pending. The case is in charge of District Attorney Christopher T. Callahan.

JESSIE M. CHAPMAN, indicted in Essex County, April, 1912, for the murder of Eva F. Ingalls, at Lynn, on March 6, 1912. She was arraigned May 7, 1912, and pleaded not guilty. W. Scott Peters, Esq., appeared as counsel for the defendant. No further action has been taken in this case. The case is in charge of District Attorney Henry C. Attwill.

WILLIAM A. DORR, indicted in Essex County, April, 1912, for the murder of George E. Marsh, at Lynn, on April 11, 1912. He was arraigned July 12, 1912, and pleaded not guilty. C. Neal Barney, Esq., appeared as counsel for the defendant. No further action has been taken in this case. The case is in charge of District Attorney Henry C. Attwill.

LUIGI MELINAZZO, indicted in Middlesex County, September, 1912, for the murder of Antonio Lando, at Waltham, on Aug. 12, 1912. He was arraigned Sept. 12, 1912, and pleaded not guilty. Frank M. Zottoli, Esq., was assigned by the court as counsel for the defendant. No further action has been taken in this case. The case is in charge of District Attorney John J. Higgins.

NICHOLAS TSOUKLARIS, indicted in Essex County, July, 1912, for the murder of George Kashouris, at Peabody, on May 3, 1912. He was arraigned July 12, 1912, and pleaded not guilty. William H. Fay, Esq., was assigned by the court as counsel for the defendant. No further action has been taken in this case. The case is in charge of District Attorney Henry C. Attwill.

GRADE CROSSINGS.

Construction has been in progress since the last report at East Boston, Bourne, Clinton, Lowell, Lynn, Neponset, Somerville, Weston and Worcester, and 46 visits of inspection to these various places have been made by the engineer of grade crossings.

Forty-six hearings before, and conferences with, special commissioners and auditors have been attended by this department, either by the engineer of grade crossings or by an assistant attorney-general.

Statements of expenditures, numbering 43, amounting to \$2,454,485.25, have been examined. Objection to items amounting to \$86,230.78 has been made, \$5,105.43 of which have been disallowed, and decisions as to \$73,972.53 are pending. Of objections made in previous years, \$5,939.43 have been disallowed, making a total amount disallowed during the year of \$11,044.86, and decisions are now pending as to \$166,575.69.

Plans have been prepared in two cases for presentation to commissions.

The engineer of grade crossings has also been employed by the Board of Railroad Commissioners a total of twenty-seven and one-half days, under authority of St. 1911, c. 214.

RECLAIMING SAVINGS BANK DEPOSITS.

Under the provisions of St. 1908, c. 590, § 57, it is provided that any person claiming a right to money deposited with the Treasurer and Receiver-General, which has been paid into the treasury of the Commonwealth under the provisions of St. 1908, c. 590, § 56, that deposits that have

remained unclaimed for more than thirty years shall be so paid into the treasury, may bring a petition to establish such right in the Superior Court. It has been suggested that inasmuch as the original proceedings for payment of such deposits into the treasury of the Commonwealth is by petition of the Attorney-General filed in the Probate Court, and the records of the cases are in that court, and such deposits are actually paid under decree of the Probate Court, the Probate Court and not the Superior Court is the proper court for the bringing of the petition under section 57 to have the money repaid by the Treasurer to the claimant. I concur with that suggestion, and recommend that legislation be enacted which will provide for such change.

RETURNS OF LEGISLATIVE COUNSEL.

A request of the Secretary of the Commonwealth for an opinion concerning the so-called "lobby returns act," relating to legislative counsel or agents (R. L., c. 3, §§ 24, 25 and 30), caused me to consider these provisions and to render an opinion thereon, in substance, that the requirement of these provisions is not satisfied by the mere statement that counsel are employed at an annual salary, without stating any amount, and that the intent of the act was to require a complete and detailed statement of all expenses incurred or paid in connection with the employment of legislative counsel or agents, and that the requirements of this act could only be properly carried out by a statement of the amount of the annual salary or by a definite apportionment of the amount charged for legislative services. While this interpretation has been generally accepted and observed, there have been differences of opinion expressed by certain counsel coming under said provisions, as to the enforceability of such interpretation of the enactments as they stand. In order to avoid possible contests in the courts in this regard these provisions should be amended in order to be effective in carrying out the purposes for which they were apparently intended; that is, to make public the actual amount of expenditures on behalf of or concerning legislation. I therefore recommend that some

amendment be passed by the Legislature specifying the requirements above set forth, or making other provision that may appear to the Legislature better adapted to carry out the intent of those enactments.

DEPARTMENT OF THE ATTORNEY-GENERAL.

The amount of work in this department has continued its consistent increase during the year. The number of cases requiring the attention of the office for 1911 was 5,338, which number has been increased during the past year to 6,793.

Additional suits against the various savings banks in the Commonwealth have been instituted during the year to recover deposits which have been unclaimed for more than thirty years, under the provisions of St. 1907, c. 340, and St. 1908, c. 590, §§ 56 and 57, and the amount of \$81,755.93 has already been recovered by such actions, while final action in other cases is still pending.

Eleven cases have been argued before the Supreme Judicial Court of the Commonwealth during the year.

In the United States Supreme Court the case of *Jordan v. Commonwealth*, involving important constitutional questions with reference to the Massachusetts criminal procedure, has been argued and disposed of, that court having sustained the decision of our Supreme Judicial Court in favor of the Commonwealth, and the sentence has been executed in accordance with law.

There are now pending in the United States Supreme Court two cases which involve the constitutionality of the law of this Commonwealth concerning taxation of foreign corporations, said cases being *Baltic Mining Company v. Commonwealth of Massachusetts* and *S. S. White Dental Manufacturing Company v. Commonwealth of Massachusetts*.

Demands upon this department during the year for investigations and action involving matters that may be termed questions of general social welfare cause me to call attention to the fact, to which I referred in my last annual report, that this department as now constituted is not properly

authorized or equipped to undertake any adequate investigation or action along these lines. If social, civic and political conditions in this Commonwealth are so changed that it is deemed advisable by the Legislature that the Attorney-General and his department should engage in such undertakings, I respectfully suggest that the policy of the laws by which the Attorney-General is now governed should be altered, and that broader powers and a largely increased appropriation of money be assigned to him by appropriate legislation.

Two volumes of the official opinions of the Attorneys-General have already been printed, which contain the important opinions from 1891 to 1905, inclusive, and which have come into general use as valuable books of reference. Since the last publication there have been rendered opinions enough to make a third volume, of uniform size and contents with the preceding volumes I and II. I therefore request that the Attorney-General be authorized by resolve of the Legislature to collate, edit and publish, in a volume properly indexed and digested, such of the official opinions since the year 1905 as the Attorney-General may deem to be of public interest or useful for reference; and that the edition so published may be distributed under the supervision of the Attorney-General. An appropriation of \$2,500 would probably be adequate to cover the expense.

To fill the vacancy created by the retirement of former Assistant Attorney-General Field at the beginning of the year, I appointed Mr. Walter A. Powers of Brookline, who has rendered valuable service to the department since his appointment.

Annexed to this report are the principal opinions submitted during the current year.

Respectfully submitted,

JAMES M. SWIFT,

Attorney-General.

OPINIONS.

Marriage — Notice of Intention of Marriage — Entry — Certificate.

Under the provision of R. L., c. 151, § 16, as amended by St. 1911, c. 736, § 1, that “persons who intend to be joined in marriage in this commonwealth shall, not less than five days before their marriage, cause notice of their intention to be entered in the office of the clerk or registrar of the city or town in which they respectively dwell, or, if they do not dwell within the commonwealth, in the office of the clerk or registrar of the city or town in which they propose to have the marriage solemnized,” and the provision of R. L., c. 151, § 53, as amended by St. 1911, c. 736, § 2, that “after the expiration of five days from the date of the entry of such intention the clerk or registrar shall deliver to the parties a certificate . . . , specifying the time when notice of the intention of marriage was entered with him . . .”, delivery of the certificate should not be made until the expiration of five full days after the date of entry, excluding the day of such delivery and Sundays and holidays.

JAN. 2, 1912.

HON. ALBERT P. LANGTRY, *Secretary of the Commonwealth.*

DEAR SIR: — You have requested my opinion as to the manner in which the time which must elapse between the entry of notice of intention of marriage and the issuing of the certificate thereof is to be computed.

R. L., c. 151, § 16, as amended by St. 1911, c. 736, § 1, is as follows: —

Persons who intend to be joined in marriage in this commonwealth shall, not less than five days before their marriage, cause notice of their intention to be entered in the office of the clerk or registrar of the city or town in which they respectively dwell, or, if they do not dwell within the commonwealth, in the office of the clerk or registrar of the city or town in which they propose to have the marriage solemnized.

R. L., c. 151, § 23, as amended by St. 1911, c. 736, § 2, is, in part, as follows: —

After the expiration of five days from the date of the entry of such intention the clerk or registrar shall deliver to the parties a certificate signed by him, specifying the time when notice of the intention of marriage was entered with him and all facts relative to the marriage which are required by law to be ascertained and recorded, except those relative to the person by whom the marriage is to be solemnized.

R. L., c. 151, § 25, as amended by St. 1911, c. 736, § 3, prescribes a penalty for the improper issuing of a certificate of intention of marriage.

The language used in section 16, as amended, to describe the five days' period is different from that used in section 23, as amended. It describes, however, the same period of time, and must be construed in the same way. In computing the five days' period in accordance with section 23, as amended, the date of the entry of intention must be excluded. *Bemis v. Leonard*, 118 Mass. 502. The language clearly indicates that five days are to expire before the delivery of the certificate, that is, the day of such delivery is to be excluded from the computation. Fractions of a day are, of course, to be disregarded (see *Hannum v. Tourtellott*, 10 Allen, 494), as a day means twenty-four hours and begins at midnight. As to Sunday, the general rule is that "when a statute fixes a limitation of time within which a particular act may or may not be done," if the time limited "is less than a week, Sunday is excluded." *Cunningham v. Mahan*, 112 Mass. 58, 59. I know of no reason why the general rule should not be applied to the statute in question. The meaning of this statute is that persons who are interested in an intended marriage are entitled to a reasonable opportunity on each of five days to examine the records in the office of the clerk or registrar of the city or town for the notice of intention of such marriage. On Sunday the clerk or registrar is not required to keep his office open and his records are not ordinarily open to inspection. Similarly, he is not required to keep his office open on a legal holiday. R. L., c. 8, § 4, cl. 9. Such a holiday should, therefore, in my opinion, be excluded from the computation. See, however, my opinion to the Governor of the Commonwealth, under date of June 1, 1911.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Legislative Counsel and Agents — Returns — Compensation.

The provision of R. L., c. 3, § 24, requiring the keeping of a docket for the entry of the names of legislative counsel and agents, that "such entries shall include the name and business address of the employer, the name, residence and occupation of the person employed, the date of the employment or agreement therefor, the duration of the employment, . . . and the special subjects of legislation, if any, to which the employment relates," is satisfied by an entry that a person is so employed "on all matters of interest to the employer," unless the employment is for some special subject of legislation.

The provision of R. L., c. 3, § 24, above quoted, and the further provision of section 30, that an employer "shall render to the secretary of the commonwealth a complete and detailed statement, under oath, of all expenses incurred or paid in connection with the employment of legislative counsel or agents, or with promoting or opposing legislation," are not complied with by a statement that a person is employed as legislative counsel upon an annual salary without a statement either of the amount of such salary or of a fair apportionment thereof.

JAN. 9, 1912.

HON. ALBERT P. LANGTRY, *Secretary of the Commonwealth.*

DEAR SIR:— You have requested my opinion with reference to R. L., c. 3, §§ 23, 24, 25 and 30, in substance as to whether a general statement that a legislative counsel or agent is employed "on all matters of interest to said corporation," is in compliance with the law.

Said section 24, after requiring the keeping of a docket in which shall be entered the names of legislative counsel and agents, provides that —

Such entries shall include the name and business address of the employer, the name, residence and occupation of the person employed, the date of the employment or agreement therefor, the duration of the employment, if it can be determined, and the special subjects of legislation, if any, to which the employment relates.

Under this section, in my opinion, no entry is required other than one such as "on all matters of interest to said corporation," unless said employment is for some special subject of legislation. There may be a general employment other than employment in connection with specific legislation. Section 25, however, requires further entries, both by the employer and the employee.

Under the requirements of this section I am of the opinion that although the original employment may be general, a counsel or agent before acting with reference to any specific piece of legislation must make an entry of that specific legislation upon the docket.

You also request my opinion in substance as to whether the return by a legislative counsel or agent of employment on an annual salary, which salary is not stated, is in compliance with the law. Said section 30 requires that the employer "shall render to the secretary of the commonwealth a complete and detailed statement, under oath, of all expenses incurred or paid in connection with the employment of legislative counsel or agents, or with promoting or opposing legislation." This does not, in my opinion, require an employer to make a detailed payment for each particular service. The statute, however, is not complied with by a mere statement that the legislative counsel is employed upon an annual salary. If the service performed as legislative counsel or agent is substantial in amount, so that it must have been taken into consideration in fixing the amount of the annual salary, there is expense incurred within the meaning of the statute which should be made to appear in some manner. It is not clear just how this should be done in case no apportionment is made by the employer. If the annual salary is stated it would seem to cover the requirement of the statute, or if a fair apportionment of said salary was made, and that part apportioned to legislative work is returned, the provisions of the statute would seem to be fulfilled. A mere return of an annual salary, without stating any amount, is not, in my opinion, a compliance with the law.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Attorney-General — Order fixing Limit of Time for Performance of Duty to advise General Court — Street Railway Corporation — New York, New Haven & Hartford Railroad Company — Ownership and Control of Springfield Street Railway Company — Supreme Judicial Court — Decree — Compliance.

The General Court has no authority to fix a limit of time within which the Attorney-General shall discharge his statutory duty of advising the General Court or either branch of it.

The action of the New York, New Haven & Hartford Railroad Company in divesting itself of all interest in or control over the New

England Investment and Security Company, which, through the instrumentality of the Springfield Railway Companies, owned and controlled the Springfield Street Railway Company, and by placing the stock of such street railway company in the ownership and control of the New England Investment and Security Company, whose trustees and officers are not connected as officers or directors with the New York, New Haven & Hartford Railroad Company and have entered into no agreement, trust or other undertaking with said company, with respect to their acts as officers or trustees of the New England Investment and Security Company, if performed in good faith, constitutes a compliance with the decree of the Supreme Judicial Court dated June 23, 1908, which enjoined the New York, New Haven & Hartford Railroad Company from subscribing for or taking or holding, directly or indirectly, the stock of the Springfield Street Railway Company, and from assuming or exercising the franchise or privilege of subscribing for, taking or holding the stock of such corporation.

JAN. 29, 1912.

HON. LEVI H. GREENWOOD, *President of the Senate.*

SIR:— On June 2, 1911, the General Court adopted an order in the following terms:—

Ordered, That the Attorney-General report to the General Court, not later than Jan. 15, 1912, whether the New York, New Haven & Hartford Railroad Company has complied, with respect to the Springfield Street Railway Company, with the order of the court, as more particularly set out in a decree, under date of June 23, 1908, of the Supreme Judicial Court; and, if so, how said railroad company has divested itself of its interest in said railway in accordance with said decree.

With respect to the form of the order, it is to be observed that the General Court has no authority to fix a limit of time within which the Attorney-General shall discharge his statutory duty of advising the General Court, or either branch of it. See II Op. Atty.-Gen. 125, 405.

It may be doubted, also, whether the order as framed presents any such question of law as is contemplated by the provision of R. L., c. 7, § 7, that the Attorney-General “shall give his opinion upon questions of law submitted to him by the governor and council or by either branch of the general court,” inasmuch as no sufficient facts are presented to raise any question of law; and the order apparently contemplates not so much a determination of a question of law as an investigation into existing facts and a report thereon. Inasmuch, however, as it appears

that certain facts with respect to the action of the New York, New Haven & Hartford Railroad Company in the premises have been presented to the Board of Railroad Commissioners in connection with a petition of the Springfield Street Railway Company and the Western Massachusetts Street Railway Company and a petition of the Uxbridge & Blackstone Street Railway Company and the Worcester & Blackstone Valley Street Railway Company for the approval by such Board of proposed consolidations of the companies joining in each of the respective petitions, upon which such Board has officially acted, and the same facts were submitted to certain individual members of the Committee on Railroads at the session preceding that at which the order above quoted was adopted, in connection with the passage of St. 1910, c. 601, authorizing the New York, New Haven & Hartford Railroad Company to acquire, purchase, hold and own the whole, or any part not less than half, of the capital stock of the Berkshire Street Railway Company, it may fairly be presumed that such facts were known to the General Court. I shall, therefore, assume that the question of law intended to be submitted by the order of the General Court was, in substance, whether or not the acts of the New York, New Haven & Hartford Railroad Company as presented to the Board of Railroad Commissioners constitute a proper compliance with the terms of the decree of June 23, 1908, referred to in said order.

The history of the litigation between the Commonwealth and the New York, New Haven & Hartford Railroad Company is fully discussed in the reports of my predecessor to the General Court for the years 1907 (p. xiii.) and 1908 (p. xv.). The decree referred to was rendered upon an information in equity brought by the Attorney-General under the provisions of St. 1906, c. 372, in substance alleging that the New York, New Haven & Hartford Railroad Company, a corporation duly organized under the laws of this Commonwealth for the purpose, among others, of owning and operating a railroad therein, had directly and indirectly subscribed for, taken and held the stock and bonds and had guaranteed the bonds and dividends and was then directly and indirectly holding the stock and bonds and was guaranteeing the bonds and dividends of certain street railway companies incorporated under the laws of this Commonwealth, to wit, the Worcester & Southbridge Street Railway Company, the Worcester & Blackstone Valley Street Railway

Company, the Worcester & Webster Street Railway Company, the Webster & Dudley Street Railway Company, the Berkshire Street Railway Company and the Springfield Street Railway Company, and that the stock and bonds held and the bonds and dividends guaranteed by said railroad company were so held and guaranteed without authority from the General Court, or any law thereof, and that the New York, New Haven & Hartford Railroad Company, by reason of the acts described, had assumed and exercised and was assuming and exercising a franchise and privilege and had transacted and was transacting a kind of business not authorized by its charter or by the laws of this Commonwealth, to wit, the franchise and privilege of acquiring, taking and holding the stock and bonds of such domestic street railway corporations and of guaranteeing the bonds and dividends of said corporations and of owning and operating said street railway corporations and the business of acquiring or purchasing said stock and bonds and of guaranteeing said bonds and dividends, and of owning and operating street railway corporations, in violation of law and to the prejudice and damage of the Commonwealth. The petition then concludes —

Wherefore, the Attorney-General prays the consideration of this court in the premises, and that a writ of injunction issue restraining said New York, New Haven & Hartford Railroad Company from the further use and enjoyment of said franchise and privilege and from the further prosecution of the said business, and for such other relief in the premises as equity and justice may require.

The decree, so far as it is material to the question now presented, is as follows: —

It is ordered, adjudged and decreed as follows: —

The defendant is, and its officers, directors, attorneys, agents and employees, respectively and collectively, are hereby enjoined and restrained: —

1. From subscribing for or taking, directly or indirectly, the capital stock of the Worcester & Southbridge Street Railway Company, the Worcester & Blackstone Valley Street Railway Company, the Worcester & Webster Street Railway Company, the Webster & Dudley Street Railway Company, the Berkshire Street Railway Company and the Springfield Street Railway Company, or either of them, all being street railway corporations incorporated

under and by virtue of the laws of this Commonwealth, and mentioned in the information.

2. From assuming or exercising the franchise or privilege of subscribing for, or taking, directly or indirectly, the stock of said street railway corporations, or either of them.

3. From holding, directly or indirectly, the stock of said street railway corporations, or either of them, after the first day of July, in the year 1909.

4. From assuming or exercising the franchise or privilege of holding, directly or indirectly, the stock of said street railway corporations, or either of them, after the first day of July, in the year 1909.

Provided, however, That nothing herein contained shall affect existing leases executed in accordance with the provisions of chapter 293 of the Acts of the year 1901 of this Commonwealth.

From this decree the defendant appealed, and the decree was finally affirmed in *Attorney-General v. New York, New Haven & Hartford Railroad Co.*, 201 Mass. 370.

The state of facts to which this decree was applicable arose as follows: the New York, New Haven & Hartford Railroad Company, a consolidated corporation created by the concurrent legislation of the State of Connecticut and the Commonwealth of Massachusetts, acquired in the years 1903 and 1904 all the shares of stock of the Worcester & Connecticut Eastern Railway Company, which by appropriate legislation in the State of Connecticut became, in part at least, a holding corporation under the name of Consolidated Railway Company of Connecticut. The Consolidated Railway Company of Connecticut in turn acquired all or a majority of the stock of the domestic street railway corporations named in the information of the Attorney-General, except the Springfield Street Railway Company, of which substantially all of the stock was acquired by a voluntary association known as the Springfield Railway Companies, created for that purpose and controlled by the Consolidated Railway Company of Connecticut. The attention of the Legislature of 1905 having been directed to the situation so created with respect to the ownership of the stock in domestic street railways, and being advised by the then Attorney-General that the ownership and control of the capital stock of street railway companies incorporated in Massachusetts by the New York, New Haven & Hartford Railroad Company or the Consolidated Railway Com-

pany of Connecticut was illegal (see II Op. Atty.-Gen. 570), an inquiry into the facts relative to such acquisition was begun, but no definite action was taken thereon. In the Legislature of the following year the discussion was renewed; a bill entitled "An Act relative to investments by railroad corporations in street railway companies" was introduced but not finally adopted, and St. 1906, c. 372, which authorized the Attorney-General to proceed by an information in equity against any corporation which assumed or exercised a franchise or transacted a business not authorized by the laws of the Commonwealth, and under which the information in the present case was brought, was enacted. On June 26, 1906, before the conclusion of the session of the Legislature for that year, the Consolidated Railway Company of Connecticut sold and conveyed to the New England Investment and Security Company, a voluntary association, all of the stock, bonds and other securities held by it in the Worcester & Southbridge Street Railway Company, the Worcester & Blackstone Valley Street Railway Company and the Berkshire Street Railway Company, and 102 shares of stock in the Springfield Street Railway Company, and also sold and conveyed to said company all of its interest in the Springfield Railway Companies, which then held 19,253 shares of the stock of the Springfield Street Railway Company, which, with the 102 shares already referred to, were substantially all of the shares of said stock. In 1907, under authority of an act of the Connecticut Legislature (House Joint Resolution No. 357) the New York, New Haven & Hartford Railroad Company was merged into the Consolidated Railway Company of Connecticut, and the consolidated corporation, by a later statute, became the New York, New Haven & Hartford Railroad Company. So far as I am aware the situation so established continued unchanged until May 8, 1908, when the opinion in the case of *Attorney-General v. New York, New Haven & Hartford Railroad Co.*, 198 Mass. 413, was handed down. In that decision the court held, in substance, that the Consolidated Railway Company of Connecticut and the two voluntary associations, the Springfield Railway Companies and the New England Investment and Security Company, were all instrumentalities of the New York, New Haven & Hartford Railroad Company through which such corporation acquired and owned and used the property of the domestic street railway corporations named in the information,

“with as complete control as it has over its locomotive engines,” in violation of the provision of St. 1906, c. 463, Part II., § 57, that —

A railroad corporation, unless authorized by the general court or by the provisions of the following five sections, shall not directly or indirectly subscribe for, take or hold the stock or bonds of or guarantee the bonds or dividends of any other corporation.

The court further stated, on page 431, that —

From the findings and evidence in the very voluminous report of the master, and notably from the testimony of Mr. Mellen, the president of the voluntary associations, and the corporations, and of Harmer, the secretary and comptroller of the New England Investment and Security Company, it is plain that all the street railway companies mentioned in the information are indirectly held and controlled and managed in the interest of the defendant as absolutely and completely as it holds and manages its line of railroad between Springfield and New York.

It thus appeared that the precise situation to which the decree above quoted was directed was an indirect and illegal control by the New York, New Haven & Hartford Railroad Company of the stock, bonds and other securities of the specified domestic street railway corporations, effected through an ownership by the New York, New Haven & Hartford Railroad Company of all of the stock of the Consolidated Railway Company of Connecticut, which, in turn, controlled the Springfield Railway Companies and the New England Investment and Security Company, which held the legal title to the stock, bonds and other securities of such domestic street railway corporations.

The decree in terms enjoins and restrains the defendant, and its officers, directors, attorneys, agents and employees, in two respects, — first, from subscribing for or taking either directly or indirectly, and from assuming to exercise the franchise or privilege of subscribing for or taking directly or indirectly, the stock of the street railways included within its provisions; and second, from holding directly or indirectly, and from assuming the franchise or privilege of holding directly or indirectly, such stock. Briefly stated, those enjoined must not, either directly or indirectly, acquire or hold such stock. It is unnecessary to determine what should be deemed to constitute a direct acquisi-

tion or holding of the stock by the New York, New Haven & Hartford Railroad Company or its officers, directors, attorneys, agents and employees, since upon the facts in evidence the court failed to find that the acquisition and holding were direct in the first instance. With respect to an indirect subscription for and taking of such stock subsequent to the date of the decree no question appears to have been raised, and therefore the sole inquiry presented for my determination is whether or not that corporation has ceased to indirectly hold or control the stock of the Springfield Street Railway Company, the corporation named in the order of the General Court.

In *Attorney-General v. New York, New Haven & Hartford Railroad Co.*, 198 Mass. 413, the court, at page 426, has defined the words "subscribed for, take or hold" in St. 1906, c. 463, Part II., § 57, as —

intended to include legal ownership of every kind. The word "indirectly" covers other modes of holding than by taking or holding the legal title. The words together cover every kind of proprietary interest in the stock or bonds referred to. It is immaterial how or where the legal title is held directly, if, indirectly, the railroad corporation is the equitable or beneficial owner of it. What the Legislature was seeking to prevent was influence in the management of the subordinate corporation by the other corporation, however exercised, and whether extending to absolute control or falling short of it. With this in view, language was used in the statute to include every kind of beneficial ownership, however indirectly held.

The situation with respect to the indirect holding of the stock by the New York, New Haven & Hartford Railroad Company was described at length by the court, at pages 426-431: —

The master's summary of facts and the other findings that appear in the report show how completely the defendant controls the street railways in question. The capital stock of all of them but the Springfield Street Railway Company was bought and held by the Consolidated Railway Company, all of whose stock is held by the defendant, and all of whose directors are the defendant's directors. If we assume that this corporation was legally organized and is legally maintained, so as to have a separate corporate existence, it is in reality a piece of legal machinery owned and operated by the defendant. Through this the defendant acquires and owns and uses property with as complete control as it has over its locomotive engines. If it does this indirectly, it does it as effectively as

if the ownership were direct. Through the direct purchase and ownership of the street railway corporations, by its creature, the Consolidated Railway Company, the defendant transgressed the law as to all the street railway companies mentioned in the information, except the Springfield Street Railway Company, and is still transgressing in the same way as to the Worcester & Webster Street Railway Company and the Webster & Dudley Street Railway Company, whose ownership is retained in the same form. Some of these street railway companies have been dealt with directly by the defendant, at different times, by votes of its directors while acting in that capacity. The defendant's president is the president of the Consolidated Railway Company and of all these street railway companies, and he receives no compensation for the performance of these official duties, except his salary as president of the defendant corporation.

The stock of the Springfield Street Railway Company was acquired through action of the Consolidated Railway Company, whose directors voted that it "should be acquired by this company, and that the plan for payment of the same, outlined by the president be approved, namely, the establishment of a trust covering the issue of \$3,000,000 guaranteed trust certificates, and the sum of \$1,500,000 of 4 per cent. debentures of this company." Here was the origin of the Springfield Railway Companies, which was established by the Consolidated Railway Company as a part of a scheme for holding and controlling the stock of the Springfield Street Railway Company. This is a voluntary association, consisting of a board of trustees, of whom all but one are directors of the Consolidated Railway Company and of the defendant corporation, who are designated as trustees in the declaration of trust, together with the members of the firm of Lee, Higginson and Company of Boston, bankers, who are called subscribers. Under the instrument the trustees assume no personal financial liability and have no beneficial ownership, although they are the holders of the legal title to all the property belonging to the association, and are the managers of it. Lee, Higginson and Company are parties for the purpose of disposing of preferred shares to be issued by the association, and managing other matters of finance. As a part of the arrangement, the Consolidated Railway Company entered into a contract with Lee, Higginson and Company which, after the formal part, began with a recital as follows: "Whereas, the Consolidated Railway Company desires to acquire the whole or at least a majority of the capital stock of the Springfield Street Railway Company, and desires Lee, Higginson and Company to offer to the stockholders of said company \$225 in cash per share, or \$75 in cash per share and \$150 in preferred stock of the Springfield Railway Companies issued under a declaration of trust, dated March 15, 1905," etc. It

was then agreed that the Consolidated Railway Company should sell its 4 per cent. fifty-year debentures to the amount of \$1,500,000 and Lee, Higginson and Company should buy not exceeding that amount of these debentures at a price named, and should underwrite not exceeding \$2,937,600 in amount of the preferred shares of the Springfield Railway Companies at \$100 per share. Then followed this recital, "which sale of bonds, with cash to be paid by the Consolidated Railway Company, and underwriting, will furnish the funds necessary for the purchase of said street railway stock at the price agreed upon," etc. It was then agreed that the Consolidated Railway Company should forthwith issue, sell and deliver to Lee, Higginson and Company, the debentures, and that there should be "formed a holding trust to be called the Springfield Railway Companies . . . to acquire and hold the whole or at least a majority of the capital stock of the Springfield Street Railway Company; which said trust shall issue at this time not exceeding \$2,937,600 of preferred shares, which shall be entitled to cumulative dividends at the rate of 4 per cent. per annum, payable," etc., — "and in case of liquidation, payment of the principal of said preferred shares at the rate of \$105 per share, to be guaranteed by the Consolidated Railway Company, and to be subject to call on any dividend date at the rate of \$105 per share, as provided in the agreement of said Consolidated Railway Company with the Springfield Railway Companies," etc. There was a provision that Lee, Higginson and Company should underwrite at par so many of the preferred shares as should be necessary to acquire the whole, or at least a majority of the stock of the Springfield Street Railway Company at the price stated. There was then a provision for an underwriting commission to be given to Lee, Higginson and Company in full payment for their services. The expenses of forming the trust and of carrying out the terms of the agreement were to be paid by the Consolidated Railway Company. Under this arrangement the stock of the Springfield Street Railway Company was acquired and turned over to the association, which consisted of the trustees, with no financial interest, and the Consolidated Railway Company, which was then the beneficial owner of all the property. The common shares in the Springfield Railway Companies to the amount of \$5,000,000, were to be delivered to the Consolidated Railway Company as soon as a majority of the stock of the Springfield Street Railway Company should be acquired. The proceeds of all the preferred shares were to be accounted for to the Consolidated Railway Company by Lee, Higginson and Company. The trust, including the accompanying contracts, was simply a machine, constructed for the management of the property and the business in the interest of the Consolidated Railway Company, which was the interest of the defendant corporation. As to

sales made by Lee, Higginson and Company to third persons, and as to the underwriting of Lee, Higginson and Company if that be deemed a purchase by them of the preferred shares, the Consolidated Railway Company is still indirectly the owner of the shares, or at least of an interest in them. The Springfield Railway Companies is not a corporation, although the parties, by their contract, sought to obtain many of the advantages of a corporation without its liabilities. See *Hussey v. Arnold*, 185 Mass. 202. All who have any proprietary interest in it have rights of property as individual owners, subject to such restraints upon the management and use of it as are legally imposed by the contracts under which it is held. They are equitable tenants in common. By the terms of the agreement the association must be wound up and liquidated at the end of twenty years and eleven months. If there are profits from the enterprise, the Consolidated Railway Company will be entitled to the whole of them. It held all the common shares, although it has since turned them over to the New England Investment and Security Company. The other holders of the preferred shares can receive only \$105 per share as principal, with interest at 4 per cent. Any proceeds beyond that amount will go to the Consolidated Railway Company. If there is not enough in the property to pay that, the Consolidated Railway Company must make up the deficiency; for it guaranteed this amount to all of the preferred shares on liquidation. It can at any time wind up the association; for by its contract it has retained a right to call and redeem all the preferred shares on any dividend date at \$105 per share. The case is like that of an association that issues mortgage bonds to be redeemed at \$105 at maturity, with a right to call and redeem them at any earlier time at the same rate. In such a case the bondholders have merely made a loan. The real beneficial owners of the property are those who have agreed to pay the loan whereby the property will be redeemed. The transfer of certificates to purchasers of preferred shares is in the nature of a pledge. It seems plain that the Consolidated Railway Company is indirectly the holder and owner of everything belonging to the Springfield Railway Companies, subject to its relations to the New England Investment and Security Company to which we shall refer hereafter. As the defendant owns all the stock of the Consolidated Railway Company, it is indirectly the holder and owner of the 19,253 preferred shares of the Springfield Street Railway Company in the hands of the trustees of the Springfield Railway Companies, as well as of the right to redeem the preferred shares in the hands of purchasers.

The New England Investment and Security Company is a voluntary association similar to the Springfield Railway Companies, although in terms it is of broader scope as to the property that may be owned and the business that may be transacted. The decla-

ration of trust by which it was created was signed by seven of the directors of the Consolidated Railway Company and of the defendant corporation, who were designated as the trustees, and by the Consolidated Railway Company, and by a member of the firm of Mackay and Company, bankers, who contracted to sell the preferred shares, and by an assistant of the president of the numerous corporations and the associations, who are designated together as subscribers. The trustees have no financial interest and are under no financial liability in regard to the property or business, but they hold the legal title and act as managers, under the name of the New England Investment and Security Company. They issued preferred shares and common shares which represent the ownership in the property and business of the association. The preferred shares are guaranteed by the Consolidated Railway Company, principal and interest, as the shares of the Springfield Railway Companies are, and are subject to call in the same way, and are to be redeemed at \$105 per share when called, or when the affairs of the association are liquidated. This guaranty was made at the request of the defendant corporation, which in turn guaranteed the Consolidated Railway Company against loss from its guaranty. The Consolidated Railway Company sold to the New England Investment and Security Company all the stocks and bonds which it held of the Worcester & Southbridge Street Railway Company, the Worcester & Blackstone Valley Street Railway Company, the Worcester Railway and Investment Company, the Springfield Street Railway Company and the Springfield Railway Companies, for the sum of \$10,000,000, which was paid by the promissory note of the New England Investment and Security Company, and it guaranteed the preferred shares of this company to the amount of \$10,000,000, at the request of the defendant corporation. The contract under which the shares were issued and the guaranty was made, was signed only by the New England Investment and Security Company, the Consolidated Railway Company and the New York, New Haven & Hartford Railroad Company. In the last analysis, in view of the ownership of one corporation by the other, the only party that had any interest in the matters covered by the contract was the defendant corporation. There was a contract with Mackay and Company for the sale of these shares, but they were all held by Mackay and Company for the benefit of the Consolidated Railway Company. At the time of the hearing there were 66,137 preferred shares held by Mackay and Company and owned by the Railway Company. So far as relates to the questions with which we are now concerned, there is no substantial difference between the two voluntary associations. In each the equitable ownership is in the Consolidated Railway Company which is entitled ultimately to the profits from the management, if there are profits, on liquidation,

and which must make good the loss to the preferred shareholders if there is a deficiency.

So far as affects the relations of the Consolidated Railway Company with the New York, New Haven & Hartford Railroad Company, the only change in the situation dealt with by the court in its opinion above quoted appears to be that occasioned by the merger of the latter company into the former company, which has already been referred to.

Since, under the laws of Connecticut, the two corporations mentioned have been merged into a single consolidated corporation now known as the New York, New Haven & Hartford Railroad Company, that corporation, in order to bring into existence the conditions which will constitute "a performance of its duty to cease to hold or control either directly or indirectly the stocks referred to in the information" (*Attorney-General v. New York, New Haven & Hartford Railroad Co.*, 201 Mass. 370, 372), must divest itself of such holding or control, either by disposing of all interest in the two voluntary associations or by disposing of the stock of the street railway companies by a *bona fide* sale or transfer. I am advised that the New York, New Haven & Hartford Railroad Company has chosen the former method, and has taken action to divest itself of all interest in or control over the New England Investment and Security Company, which, since June 26, 1906, has owned all of the stock of the Springfield Railway Companies, which in turn held substantially all of the shares of stock of the Springfield Street Railway Company. This action is reported to me to be as follows: at the time of the decree most of the trustees and officers of the New England Investment and Security Company were also directors and officers of both the New York, New Haven & Hartford Railroad Company and of the Consolidated Railway Company of Connecticut. The present officers of the New England Investment and Security Company are not corporate officers or directors of the consolidated corporation known as the New York, New Haven & Hartford Railroad Company. In addition, the following action, as reported to me, has been taken by the New York, New Haven & Hartford Railroad Company to divest itself of the indirect ownership and control of the stock of the several street railway companies named in the decree:—

1. The New Haven Company surrendered all the common shares of the New England Investment and Security Company issued to

it except 1,000. It has surrendered, also, all the right originally reserved to it, when it surrendered such common shares, to again demand their issue to it. It has also surrendered all right to demand the issue to it of any additional common shares.

2. It has sold, without reservation or option of any kind, the 1,000 outstanding common shares. The purchasers thereof have paid for the same and hold the same with an absolute title.

3. It has assigned and transferred to the New England Investment and Security Company all its originally reserved right to call for redemption the preferred shares of the Springfield Railway Companies.

4. It has assigned to the trustees for the time being deemed to represent the common shareholders of the New England Investment and Security Company, all its originally reserved right to call for redemption the preferred shares of the New England Investment and Security Company, and that right is now held by the trustees, deemed to be appointed for the common shareholders, to be exercised by such trustees only for the benefit of the holders of such common shares.

5. It has accepted in lieu of its demand claim against the New England Investment and Security Company, fifteen-year notes, unsecured except by covenants of the Investment Company not to dispose of its existing assets without substituting other assets deemed by the trustees to be of equivalent value, and not to pledge or encumber its assets without equally securing by the instrument of pledge or mortgage the fifteen-year notes issued by the Investment Company.

6. Although advised that it was under no obligation so to do, the New York, New Haven & Hartford Railroad Company has contracted for the sale of all the fifteen-year notes so taken by it in payment of its demand claim against the New England Investment and Security Company.

7. It has sold to the New England Investment and Security Company all the bonds and promissory notes which it held of any of the street railway companies mentioned in the information excepting the Worcester & Webster and Webster & Dudley companies, the disposition of which is next hereinafter described.

8. The New York, New Haven & Hartford Railroad Company has sold and transferred to the New England Investment and Security Company all the stock, bonds, certificates of indebtedness and other obligations of every kind which it held of the Worcester & Webster and Webster & Dudley Street Railway companies, except only such as had, prior to the beginning of the suit by the Attorney-General against the New York, New Haven & Hartford Railroad, or by its predecessors in title, been pledged to the New York Security and Trust Company of New York, as trustee under the mort-

gage from the Worcester & Connecticut Eastern Railway Company, as collateral security for an issue of mortgage bonds by said last-named railway company, and as to the reversion or equity of redemption in all stock, bonds and other obligations of said Worcester & Webster and Webster & Dudley Street Railway companies so pledged, said New York, New Haven & Hartford Railroad Company has executed a transfer and assignment of all its right therein, subject only to the lien of the trustee under said mortgage.

The result of this action upon the part of the New York, New Haven & Hartford Railroad Company, as disclosed in the evidence submitted to me and contained in the official declaration and statement of the corporation made to the House of Representatives for the year 1909 (House Document 1329), and in the absence of any question as to the good faith of said corporation, is to place the stock of the several street railway companies mentioned in the decree in the ownership or control of the New England Investment and Security Company, whose trustees and officers are not connected as officers or directors with the New York, New Haven & Hartford Railroad Company and have entered into no agreement, trust or other undertaking with such corporation with respect to their acts as officers or trustees of the New England Investment and Security Company; and to terminate the ownership by the New York, New Haven & Hartford Railroad Company of any shares of the stock of the New England Investment and Security Company, either by surrendering such stock to the association itself or by transferring it to individuals, free of all trusts and under no agreement or undertaking upon the part of the individuals to whom it was transferred. (See House Document 1329, pp. 4, 5.)

Upon the information before me, therefore, I am of opinion that by divesting itself of all interest in or control over the New England Investment and Security Company, which through the instrumentality of the Springfield Railway Companies owned and controlled the Springfield Street Railway Company, the New York, New Haven & Hartford Railroad Company has complied with the decree of June 23, 1908, and in the manner above described has divested itself of its interest in the Springfield Street Railway Company.

I am, with great respect,

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Constitutional Law — Taxation — Appropriation of Public Funds — Public Purpose — Relief of Destitute Families of Striking Employees.

A proposed resolve "That there be allowed and paid from the treasury of the commonwealth the sum of ten thousand dollars to be expended . . . for the relief of destitute families of employees of the factories at Lawrence, who were thrown out of work by the strike in that city," contemplates an appropriation of money raised by taxation for a purpose other than a public purpose, and if passed would be unconstitutional.

FEB. 7, 1912.

CHANNING H. COX, Esq., *House Committee on Rules.*

DEAR SIR:— On behalf of the House Committee on Rules you have requested my opinion as to the constitutionality of the following resolve now pending before your committee:—

Resolved, That there be allowed and paid from the treasury of the commonwealth the sum of ten thousand dollars, to be expended under the direction of two persons, citizens of the city of Lawrence, to be appointed by the governor, and to serve without compensation, for the relief of destitute families of employees of the factories at Lawrence who are thrown out of work by the strike in that city. Any expenses necessarily incurred in carrying out the provisions of this resolve shall be paid from the said sum.

The question presented resolves itself into an inquiry as to whether the expenditure of money from the treasury of the Commonwealth, raised by taxation, for the purposes of the resolve is an expenditure for a public purpose, it being a well-established principle that money raised by taxation may be expended only for a public purpose. See *Lowell v. Oliver*, 8 Allen, 247; *Mead v. Acton*, 139 Mass. 341; *Kingman v. Brockton*, 153 Mass. 255; Opinion of the Justices, 155 Mass. 601; 186 Mass. 603; and 190 Mass. 613. The words "public purpose," in the sense herein used, were held in *Lowell v. Boston*, 111 Mass. 454, not to include the purpose of an act which provided for the relief of persons who had suffered loss by the fire of 1872, using, at page 472, the following language:—

As a judicial question the case is not changed by the magnitude of the calamity which has created the emergency, nor by the great-

ness of the emergency or the extent and importance of the interests to be promoted. These are considerations affecting only the propriety and expediency of the expenditure as a legislative question. If the expenditure is, in its nature, such as will justify taxation under any state of circumstances, it belongs to the Legislature exclusively to determine whether it shall be authorized in the particular case; . . .

On the other hand, if its nature is such as not to justify taxation in any and all cases in which the Legislature might see fit to give authority therefor, no stress of circumstances affecting the expediency, importance or general desirableness of the measure, and no concurrence of legislative and municipal action, or preponderance of popular favor in any particular case, will supply the element necessary to bring it within the scope of legislative power.

An opinion to the same effect was given by Attorney-General Malone in 1908 with reference to a proposed resolve providing for the expenditure of money for the relief of sufferers from the Chelsea fire.

The present resolve does not appear to have for its purpose an expenditure of money which can be considered a public purpose. Both its title and the terms of the resolve provide for aid to be given to certain individuals. The fact that the individuals may be many in number does not of itself make the purpose a public one. In *Lowell v. Boston*, above cited, appears the following language:—

The incidental advantage to the public or to the State, which results from the promotion of private interests and the prosperity of private enterprises or business, does not justify their aid by the use of public money raised by taxation, or for which taxation may become necessary.

The part of the decision in *Mead v. Acton*, above cited, also in point is as follows:—

The direct primary object is to benefit individuals, and not the public. In any view we can take of the statute, the payments it contemplates are mere gratuities or gifts to individuals. . . . A statute conferring such power is unconstitutional, because it authorizes raising money by taxation for the exclusive benefit of particular individuals, and appropriates money for a private purpose which can only be raised and used for public objects. The right to tax is the right to raise money by assessing the citizens for the

support of the government and the use of the State. The term "taxation" imports the raising of money for public use, and excludes the raising of it for private uses.

In my opinion the resolve submitted is clearly within the principles and decisions hereinbefore referred to, and would provide for an unconstitutional appropriation of public funds.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Sheriff — Right to require Assistance in Case of Actual or Impending Riot, Tumult or Other Breach of the Peace — Citizen — Militia — Precept.

Where there is imminent, impending danger of a riot or other breach of the peace, the sheriff of any county may call such aid as a man of ordinary prudence, firmness and activity in such situation might think necessary to quell such riot or disturbance; or where a tumult, riot or mob actually exists or is threatened he may, under the provisions of St. 1908, c. 604, § 142, issue a precept directing any commander of a brigade, regiment, battalion, corps of cadets or company within his jurisdiction "to appear at a time and place therein specified, to aid the civil authority in suppressing such violence and supporting the laws."

If, however, no riot or other breach of the peace actually exists or is threatened, a sheriff has no authority to call upon citizens to act as patrolmen or to do ordinary police duty.

FEB. 7, 1912.

Brig. Gen. GARDNER W. PEARSON, *Adjutant General*.

SIR: — You have requested my opinion as to whether the Sheriff of Essex County can be required to establish patrols and police guards in the city of Lawrence to take the place of and to perform the duties of the regular city police, the latter being unable to preserve the peace. I am informed, and for the purposes of this opinion assume, that there are no riots at present in the city, and that troops are stationed there against such a contingency. It is also stated that it is your desire to withdraw the militia from the city as soon as possible, consistent with the proper preservation of the peace and suppression of attempts to violate the law of the Commonwealth.

The office of sheriff is one of the oldest known to the law, and from earliest times he has been the chief officer for the preserva-

tion of the peace in his county. By R. L., c. 23, § 14, it is provided:—

They [sheriffs] may require suitable aid in the execution of their office in a criminal case, in the preservation of the peace, in the apprehending or securing of a person for a breach of the peace and in cases of escape or rescue of persons arrested upon civil process.

The first use of the phrase “suitable aid” as above employed appears in chapter 20 of the Acts of the Province of Massachusetts Bay in the year 1698. The phrase should be construed, therefore, as giving the same authority as that of a sheriff under the common law, in the light of which it is to be interpreted unless otherwise modified by statute. Consideration of the decisions in that regard discloses in each case a situation where the breach of the peace was actually in progress, or where there had been an outbreak just previously, with another disturbance expected and imminent as a reasonable certainty. I am led to the conclusion that in order to furnish cause for the sheriff to exercise this extraordinary remedy under his common law authority, there must be a necessity for it because of disorders either existing at the time of his action or imminently threatened, with apparent certainty to occur. In the exercise of this function the sheriff apparently acts in a quasi-judicial capacity, and his determination, so long as exercised within the reasonable scope of his authority, cannot be questioned. *Ela v. Smith*, 5 Gray, 121.

In addition to R. L., c. 23, § 14, hereinbefore cited, R. L., c. 211 § 1, further provides:—

If twelve or more persons, being armed with clubs or other dangerous weapons, or if thirty or more persons, whether armed or not, are unlawfully, riotously or tumultuously assembled in a city or town, the mayor and each of the aldermen of such city, each of the selectmen of such town, every justice of the peace living in any such city or town and the sheriff of the county and his deputies shall go among the persons so assembled, or as near to them as may be with safety, and in the name of the commonwealth command all persons so assembled immediately and peaceably to disperse; and if they do not thereupon immediately and peaceably disperse, each of said magistrates and officers shall command the assistance of all persons there present in suppressing such riot or unlawful assembly and arresting such persons.

As there is no riot in progress, upon the assumption in your inquiry, the situation is not within the scope of this section.

In answer to the specific inquiry, therefore, I am of the opinion that unless a riot or other breach of the peace actually exists, or there is immediate, impending danger thereof, the sheriff has no power to call citizens from their own pursuits to act as patrolmen or to do police duty; that is, to perform the ordinary duties that are performed by police patrolmen of the city of Lawrence. On the other hand, if there is imminent, impending danger of a riot or other breach of the peace the sheriff has the power and the duty to call such aid as a man of ordinary prudence, firmness and activity in his situation would think necessary to quell the disturbance. In case of threatened riot our statutes provide a method in which he may proceed, namely, to call upon the organized militia by precept issued to its commander, under St. 1908, c. 604, § 142, which provides as follows:—

In case of a tumult, riot, mob, or a body of men acting together by force, to violate or resist the laws of the commonwealth, or when such tumult, riot or mob is threatened, and the fact appears to the commander-in-chief, to the sheriff of the county, to the mayor of the city or the selectmen of the town, the commander-in-chief may issue his order, or such sheriff, mayor or selectmen may issue a precept, directed to any commander of a brigade, regiment, battalion, corps of cadets or company, within their jurisdiction, directing him to order his command, or a part thereof, to appear at a time and place therein specified, to aid the civil authority in suppressing such violence and supporting the laws; which precept shall be in substance as follows:—

COMMONWEALTH OF MASSACHUSETTS.

To [insert the officer's title] A.B., *commanding* [insert his command].

Whereas, it appears to [the sheriff, mayor or the selectmen] of the [county, city or town] of _____, that [here state one or more of the causes above mentioned] in our _____ of _____, and that military force is necessary to aid the civil authority in suppressing the same: Now, therefore, we command you that you cause [your command, or such part thereof as may be desired], armed and equipped with ammunition and with proper officers, to parade at _____, on _____, then and there to obey such orders as may be given according to law. Hereof fail not at your peril, and have you there this precept with your doings returned thereon.

This precept shall be signed by such sheriff, mayor or selectmen, and may be varied to suit the circumstances of the case; and a copy of the same shall be immediately forwarded to the commander-in-chief.

From this section the power of the sheriff and that of the mayor appear to be the same. While this means may not be the exclusive means to be employed under such circumstances, nevertheless, in case of emergency it would be proper under this authority for the sheriff to call upon the militia to aid him in the execution of the duties of his office. It would appear, therefore, that the militia might be called upon by the sheriff rather than to be relieved by him by means of other persons summoned to take the place of the militia. This action would largely be left to the discretion and judgment of the sheriff, under the circumstances as they might appear.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Constitutional Law — Police Power — Regulation of Private Business — Sale of Theatre Tickets.

The right of the Legislature under the police power to regulate the conduct of a private business in respect to public safety or morals does not extend to the regulation of the sale of tickets of admission to theatres and other places of amusement; and a proposed bill requiring that such tickets shall have the price printed thereon and that it shall be unlawful to sell or offer for sale any such ticket for an amount in excess of the printed sum, if passed, would be unconstitutional and void.

FEB. 15, 1912.

CLARENCE W. HOBBS, Jr., Esq., *Clerk, Committee on the Judiciary.*

DEAR SIR:— On behalf of the Committee on the Judiciary you have requested my opinion upon the constitutionality of House Bill No. 967. This bill in substance provides that every ticket for admission to a theatre, opera house, concert hall or other place of public exhibition or amusement shall have printed upon its face the price thereof; that no greater sum shall be asked or received therefor; and that it shall be unlawful for any person, firm or corporation to sell or offer for sale any such ticket for a sum in excess of that printed thereon.

Statutes of this character have been considered by the courts of California (*Ex parte Quarg*, 149 Cal. 79) and of Illinois (*People v. Steele*, 231 Ill. 340), and have been held unconstitutional for the reason that the business of conducting a theatre or other place of amusement is a private business, and while such business may be regulated by the Legislature in respect to

public morals or safety, under the police power, the right of regulation cannot be extended to the sale of tickets of admission to places of amusement. Thus, in *Ex parte Quarg*, above cited the court said, at page 81:—

The police power is broad in its scope, but it is subject to the just limitation that it extends only to such measures as are reasonable in their application and which tend in some appreciable degree to promote, protect or preserve the public health, morals or safety, or the general welfare. The prohibition of an act which the court can clearly see has no tendency to affect, injure or endanger the public in any of these particulars, and which is entirely innocent in character, is an act beyond the pale of this limitation, and it is therefore not a legitimate exercise of police power. The sale of a theatre ticket at an advance upon the original purchase price, or the business of reselling such tickets at a profit, is no more immoral, or injurious to public welfare or convenience, than is the sale of any ordinary article of merchandise at a profit.

I have no doubt that the principles so declared are applicable to the question now before me, and I am therefore of opinion that, if passed, House Bill No. 967 would be unconstitutional and void.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Massachusetts District Police — Chief — Boiler Inspection Department — Chief Inspector.

St. 1906, c. 521, entitled "An Act to provide for the appointment of a chief inspector of the boiler inspection department of the District Police," which provides in section 1, in part, that "said chief inspector shall have supervision over the members of said boiler inspection department in order to secure the uniform enforcement throughout the commonwealth of all acts relative to the inspection of boilers and the examination of engineers and firemen," does not create an independent department, and the action of such chief inspector is under the jurisdiction and subject to the orders of the Chief of the District Police.

FEB. 15, 1912.

Gen. J. H. WHITNEY, *Chief of the District Police*.

DEAR SIR:—Under section 1 of chapter 521 of the Acts of 1906, an act to provide for the appointment of a chief inspector

of the boiler inspection department of the District Police, providing, in part, as follows: "Said chief inspector shall have supervision over the members of said boiler inspection department in order to secure the uniform enforcement throughout the commonwealth of all acts relative to the inspection of boilers and the examination of engineers and firemen," you have made the following request for my opinion:—

To what extent has the chief of the District Police authority over said chief inspector and members of this branch of the inspection department of the District Police? That is to say:—

First.—Has the chief inspector authority to detail any or all of the boiler inspectors for duty in any district of the Commonwealth without obtaining permission from the Chief of the District Police?

Second.—Has the chief inspector the authority to order such inspectors, or any of them, from their districts to any other part of the Commonwealth without obtaining permission from the Chief of the District Police?

Third.—How far does the authority of the Chief of the District Police extend over the duties, discipline and general conduct of the chief inspector and inspectors of boilers?

You also further inquire as to whether "there exists a department known as the 'boiler inspection department'".

In my opinion there is no provision of law which establishes as a superior, independent department outside of the authority of the Chief of the District Police a "boiler inspection department."

By section 1 of chapter 108 of the Revised Laws the District Police force is divided into two departments, to wit: the inspection department and the detective department. The boiler inspectors are appointed from the inspection department of the District Police. In my opinion the action of the chief inspector of the boiler inspection department, so called, is under the jurisdiction and subject to the orders of a superior, the Chief of the District Police.

Answering your questions specifically:—

The first should be answered in the negative, that is, the details made by the chief inspector would be subject to the approval or disapproval of the Chief of the District Police.

As to the second, the same answer should be made.

As to the third, I am of the opinion that the authority of the Chief of the District Police is the same over the chief boiler inspector as it is over the heads of the other divisions of the department, that is, that he is the superior officer over all.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Commonwealth — Employee — Veteran — Retirement — Consent.

St. 1907, c. 458, § 1, providing that, with the consent of the Governor, a veteran of the civil war in the service of the Commonwealth, if incapacitated for active duty, may be retired at one-half the rate of compensation paid to him when in active service, was designed not only to provide a pension for the person so retired, but also to relieve the public service of persons unable to perform the duties required of them, and if incapacitated for duty a veteran may be so retired without his consent and upon the request and recommendation of the head of the department in which he is employed.

FEB. 16, 1912.

Gen. J. H. WHITNEY, *Chief of the District Police*.

DEAR SIR:—By a communication dated February 12 you have requested my opinion upon the question whether, under the provisions of St. 1907, c. 458, § 1, you are authorized to request and recommend the retirement of any veteran employed in the department who in your opinion is incapacitated to such a degree as to render his retirement necessary for the good of the service, irrespective of his desire to so retire.

The statute to which you have referred is as follows:—

A veteran of the civil war in the service of the commonwealth, if incapacitated for active duty, shall be retired from active service, with the consent of the governor, at one half the rate of compensation paid to him when in active service, to be paid out of the treasury of the commonwealth: *provided*, that no veteran shall be entitled to be retired under the provisions of this act unless he shall have been in the service of the commonwealth at least ten years. But if, in the opinion of the governor and council, any veteran of the civil war in said service is incapacitated to such a degree as to render his retirement necessary for the good of the service, he may so be retired at any time. A veteran retired under the provisions of this act, whose term of service was for a fixed number of years, shall be entitled to the benefits of the act without reappointment.

This statute is applicable to cases where a veteran of the civil war in the service of the Commonwealth is incapacitated for active duty, and in such cases is mandatory, and, besides providing a pension for the person retired, is obviously intended to relieve the public service of persons unable to perform the duties required of them. I am therefore of opinion that, with the consent of the Governor, a veteran may be retired, if incapacitated for active duty, without regard to the desire of such veteran in the premises; and while the statute contains no express provision to that effect, I have no doubt that the head of a department may properly request and recommend retirement in such cases.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Constitutional Law — Police Power — Regulation of Sale of Goods, Wares and Merchandise made by Convict Labor in Prison — Constitution of the United States — Commerce Clause.

A proposed act requiring that all goods, wares and merchandise made by convict labor in any prison, reformatory or jail in this or any other State and brought into this Commonwealth, shall, before being exposed for sale, be marked "Convict Made," and providing that any person offering such goods for sale or having such goods in possession, without the printed label or mark, shall be guilty of a misdemeanor, cannot be justified as a valid exercise of the police power; and since it would constitute a burden or restriction upon interstate commerce, and would therefore be in contravention of the commerce clause (U. S. Const., Art. I., § VIII.) of the Federal Constitution, would therefore be unconstitutional if enacted.¹

MARCH 8, 1912.

CHARLES T. HOLT, Esq., *House Chairman, Joint Committee on Prisons.*

DEAR SIR: — Your committee has requested my opinion upon the constitutionality of House Bill No. 833, entitled "An Act relative to the marking of goods made in penal institutions," and providing, in substance, that all goods, wares and merchandise made by convict labor in any prison, reformatory or jail in this or any other State in which convict labor is employed and imported, brought or introduced into the State of Massachusetts, shall, before being exposed for sale, be branded, labelled or marked "Convict Made;" and that any person offering such

¹ See 211 Mass. 605.

goods for sale, or having such goods in possession for that purpose, without the brand, label or mark, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding \$1,000 nor less than \$50, or by imprisonment for a term not exceeding twelve months or by both fine and imprisonment.

I am of opinion that the proposed bill, if enacted, would be unconstitutional for the reason that it is in contravention of the commerce clause of the Federal Constitution (U. S. Const., Art. I., § VIII) which provides that "the congress shall have power . . . to regulate commerce . . . among the several states, . . .", since prison-made goods, when brought into the Commonwealth from another State, become articles of interstate commerce, and, as such, may not be discriminated against. *Arnold v. Yanders*, 56 Ohio, 417. Since, for the reasons which are set forth at length in the opinion of the court in the case of *People v. Hawkins*, decided by the Court of Appeals of the State of New York (157 N. Y. Rep. 1), the proposed legislation cannot be justified as a valid exercise of the police power, it would constitute a burden or restriction upon interstate commerce, and is therefore unconstitutional.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

*Constitutional Law — Qualification of Voters — Legislature —
Police Power — Regulation of Conduct of Elections.*

The qualifications which shall entitle any person to vote or to be voted for and the right to elect and to be elected to public office are defined in Article IX. of the Declaration of Rights and Articles III., XX. and XXI. of the Articles of Amendment to the Constitution of the Commonwealth.

The conduct of elections may be regulated by the Legislature under the police power for the purpose of providing an easy and reasonable mode of exercising the constitutional right preventing error and fraud and securing order and regularity; but all such regulation must be subordinate to the provisions of the Constitution and cannot add to or diminish the qualifications of a voter as therein prescribed.

Whether or not the provisions of a proposed act which restrict the expenditure of money or the contribution of any other valuable thing in connection with an election by any person whether or not such person is a candidate for public office, to traveling expenses incurred by himself and to expenses for preparing, circulating and filing nomination papers; to forbid, except in cases of age or physical disability, the conveyance of any voter to the polls otherwise than

at his own expense, and require that if any person elected to office, or any member or agent, or his campaign committee, or any other person acting in his or their interest or behalf, is convicted of any violation of the law relating to corrupt practices at the primary at which such candidate was named, or at the election at which he was elected, such office shall be vacated and a new election shall be held to fill it, are reasonable and necessary precautions against bribery, fraud and other improper conduct in connection with elections and, therefore, a protection to the constitutional right to elect and to be elected to office, is primarily a question of fact and, therefore, a proper subject for the determination of the Legislature.

It would seem, however, that the enforcement of such stringent regulations as those above described could hardly be held to be a reasonable regulation of the exercise of the right to take part in elections.

A provision in the proposed act requiring that persons who, by reason of age or physical infirmity, are unable to reach the polls without assistance and are, therefore, transported to and from the polls shall, before voting, make a statement under oath of such disability, is clearly unconstitutional as imposing a qualification upon such persons additional to those prescribed by the Constitution.

MARCH 8, 1912.

Hon. LEVI H. GREENWOOD, *President of the Senate.*

DEAR SIR:—By an order dated February 27 the Honorable Senate has requested my opinion upon four questions of law affecting the constitutionality of House Bill No. 1360, which is entitled “An Act relative to election expenses.” Section 1 of this bill is designed to amend St. 1907, c. 560, § 316, as amended by St. 1911, c. 679, § 1, by striking out the whole of said section and substituting the following section:—

No person shall, in order to aid or promote his own or another's nomination or election to a public office, directly or indirectly, himself or through another person, give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or valuable thing, except for expenses directly incurred and paid by a person for travelling and for purposes properly incidental to travelling, and for preparing, circulating and filing nomination papers; but nothing in this section shall be construed to prohibit a person from making a voluntary payment of money or a voluntary and unconditional promise of payment of money to a political committee for the promotion of the principles of the party which it represents and for expenses properly incidental thereto.

Section 2 of the proposed bill purports to amend St. 1907, c. 560, § 317. The section as there set forth, however, has been already amended by St. 1911, c. 679, § 2, and I assume that the

proposed bill is applicable to the amended section. The present amendment strikes out the whole of this section and in its place provides that —

The mayor of each city and the selectmen of each town of two thousand or more inhabitants in the commonwealth shall, at each primary and election, provide one conveyance for each voting precinct within their jurisdiction, to be used under the direction of the presiding officer at each polling place in transporting to and from the polls such persons only as by reason of age or physical infirmity are unable to reach the same without assistance. A record of all persons so transported shall be kept by the presiding officer, and he shall require from each before voting a statement under oath of such physical disability. No voter shall be conveyed to the polls otherwise than entirely at his own expense except as herein provided.

Section 6 of the proposed bill amends St. 1911, c. 679, § 6, which provides that —

If a person elected to public office is convicted of any wilful violation of the law relating to corrupt practices in connection with the primary or election at which he was nominated or elected, his office shall thereby be vacated, and a new election shall be held for the purpose of filling the same.

so that it shall read as follows:—

If a person elected to public office, or any member or agent of his campaign committee, or any other person acting in his or their interest or behalf, is convicted of any violation of the law relating to corrupt practices in connection with the primary or election at which he was nominated or elected, his office shall thereby be vacated, and a new election shall be held for the purpose of filling the same.

The inquiries of the Honorable Senate with relation to the provisions above quoted are as follows:—

1. Is the provision in section 1 of the bill printed as House Bill No. 1360 constitutional, which forbids a candidate to incur any expense in order to aid his nomination or election except as provided in lines 12 to 20 of said section?

2. Is the provision in the same section constitutional, which extends the same prohibition to persons not candidates?

3. Is the provision in section 2 of the same bill constitutional, which provides that no voter shall be conveyed to the polls otherwise than entirely at his own expense, except in case of physical inability?

4. Is the provision of section 6 of the same bill constitutional, which provides for vacating an election because of corrupt practices without proof of a candidate's knowledge or consent?

The qualifications which shall entitle any person to vote or to be voted for in this Commonwealth, and the right to elect or to be elected to public office, which is consequent upon such qualifications, are clearly fixed and defined by the Constitution of Massachusetts, and the Legislature cannot add to or alter the former or restrict or destroy the latter. *Kinneen v. Wells*, 144 Mass. 497, 499. The provisions of the Constitution of the Commonwealth upon this subject are to be found, first, in Article IX. of the Declaration of Rights, which declares that —

All elections ought to be free; and all the inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

and second, in the Articles of Amendment to the Constitution which prescribe the qualifications of voters, to be found in Articles III., XX. and XXXI., of which it is necessary to consider only Article III. This article is as follows: —

Every male citizen of twenty-one years of age and upwards, excepting paupers and persons under guardianship, who shall have resided within the commonwealth one year, and within the town or district in which he may claim a right to vote, six calendar months next preceding any election of governor, lieutenant-governor, senators, or representatives, shall have a right to vote in such election of Governor, lieutenant-governor, senators and representatives; and no other person shall be entitled to vote in such elections.

The qualifications of voters being thus established, the conduct of elections may be regulated by the Legislature under Article IV. of section I. of Chapter 1. of Part the Second of the Constitution, by which full power and authority is conferred upon the General Court —

from time to time to make, ordain and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof;

but all legislation must be subordinate to the provisions of the Constitution already cited, and cannot add to or diminish the qualifications of a voter as therein prescribed. *Kinneen v. Wells*, *supra*, p. 499; *Blanchard v. Stearns*, 5 Met. 298, 301; *Williams v. Whiting*, 11 Mass. 424; Opinion of the Justices, 5 Met. 591, 592; *Commonwealth v. Rogers*, 181 Mass. 184, 186.

The power of the Legislature in the premises was well described by Chief Justice Shaw in the case of *Capen v. Foster*, 12 Pick. 485, at page 488, where he stated —

And this court is of opinion that in all cases where the Constitution has conferred a political right or privilege, and where the Constitution has not particularly designated the manner in which that right is to be exercised, it is clearly within the just and constitutional limits of the legislative power to adopt any reasonable and uniform regulations in regard to the time and mode of exercising that right, which are designed to secure and facilitate the exercise of such right, in a prompt, orderly and convenient manner. Such a construction would afford no warrant for such an exercise of legislative power, as, under the pretence and color of regulating, should subvert or injuriously restrain the right itself.

And see, *Cole v. Tucker*, 164 Mass. 486.

The provision of the Constitution from which the Legislature derives the power to regulate the exercise of the right of franchise is that which confers upon the General Court the police power (see *Commonwealth v. Danziger*, 176 Mass. 290, 291, and cases cited), and this power must always be reasonably exercised. *Commonwealth v. Bearse*, 132 Mass. 542, 546; *Commonwealth v. Alger*, 7 Cush. 53.

From the principles above discussed, therefore, it is clear that in passing upon the constitutionality of legislation which affects the right of any person or persons to elect or to be elected to public offices created by the Constitution or laws of the Commonwealth, it is necessary to determine as a matter of fact

whether or not such legislation is intended to "provide 'an easy and reasonable mode of exercising the constitutional right'" and is "calculated to prevent error and fraud, to secure order and regularity in the conduct of elections, and thereby give more security to the right itself." *Commonwealth v. Rogers*, 181 Mass. 184, 186; citing *Capen v. Foster*, *supra*; *Kinneen v. Wells*, *supra*; and *Jaquith v. Wellesley*, 171 Mass. 138, 143.

From the principles which I have already discussed it follows that the proposed amendments will be constitutional only if they are designed to afford and do afford an easy and reasonable mode of exercising the constitutional right of participating in elections, and are "calculated to prevent error and fraud, to secure order and regularity of conduct of elections, and thereby give more security to the right itself." It is to be observed that the effect of the proposed legislation, taken as a whole, is to restrict the expenditure of money or the contribution of any other valuable thing in connection with an election, by any person, whether or not such person is a candidate for public office, to travelling expenses and expenses properly incident to travel incurred by himself, and to expenses for preparing, circulating and filing nomination papers; to forbid, except in the manner designated, the conveyance of any voter to the polls except entirely at his own expense; and to require that if any person elected to office, or any member or agent of his campaign committee, or any other person acting in his or their interest or behalf, is convicted of any violation of the law relating to corrupt practices at the primary at which such candidate was nominated or the election at which he was elected, such office shall be vacated and a new election shall be held to fill it. The provision in St. 1907, c. 560, § 316, as amended by section 1 of the proposed bill, that the act shall not apply to voluntary payments or promises of payment of money to a political committee, does not enlarge the field of permitted expenditure, for the reason that except for the purposes already enumerated no person is authorized to expend it, although the words "for the promotion of the principles of the party which it represents and for expenses properly incidental thereto" may have been intended to permit to political committees a greater freedom than is given to individuals in the premises.

The question thus presented is primarily one of fact, and therefore a proper subject for the determination of the Legislature. The enactment of the proposed amendments would

have the effect of a determination by the General Court that the regulations contained therein were not in its opinion a restriction upon the exercise of the constitutional right affected, but were reasonable and necessary precautions against bribery, fraud and other improper conduct in connection with elections, and therefore a protection of the right itself, and, as such, would doubtless be entitled to great weight. See *Commonwealth v. Bearse*, 132 Mass. 542, 549; *Commonwealth v. Alger*, 7 Cush. 53, 102. So far as I am at liberty to express my views upon a question of this character, however, I am constrained to say that in my opinion, by the enforcement of such stringent regulations as those contained in the proposed bill, the right of every citizen of the Commonwealth duly qualified to elect and to be elected to public office would be seriously impaired and restricted, since under such regulations a general election held throughout the Commonwealth might be invalidated by the act of a single person in violating even some minor provision of the law relative to corrupt practices. A regulation of elections which makes possible such a result can hardly be held to be a reasonable regulation of the exercise of the right to take part in elections, but is, rather, an injurious restraint and interference with it. For the reasons stated, therefore, I am of opinion that the proposed amendments referred to in each of the questions submitted by the Honorable Senate do not constitute a reasonable or necessary regulation of the constitutional right, are not necessary for its protection, and, if passed, would therefore be unconstitutional and void.

With respect to the second inquiry of the Honorable Senate, which refers to section 2 of the proposed bill, there is a further objection upon constitutional grounds, in that said section purports to require of certain persons otherwise qualified to vote, as a preliminary to voting, an oath relative to their physical condition, which clearly constitutes a qualification additional to those prescribed by the Constitution.

See *Kinneen v. Wells*, 144 Mass. 497; *Rison v. Farr*, 24 Ark. 161; *Davies v. McKeeby*, 5 Nev. 369; *Green v. Shumway*, 39 N. Y. 418.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Constitutional Law — Appropriation of Money Raised by Taxation — Moral Obligation — Repayment of Money paid under Mistake of Fact or Law — New York, New Haven & Hartford Railroad Company.

The fulfilment of a moral obligation upon the Commonwealth, created by a claim growing out of general principles of right and justice and based upon considerations of a moral or merely honorary nature, such as would be binding on the conscience or honor of an individual, is a public purpose, and money raised by taxation may be appropriated therefor although such claim could not be enforced by any legal procedure.

A proposed resolve to provide for repayment by the Commonwealth of a sum erroneously paid as taxes by the New York, New Haven & Hartford Railroad Company, if the Legislature determined that the facts submitted in connection therewith imposed upon the Commonwealth a moral obligation of the character heretofore recognized, would, if passed, be constitutional.

MARCH 12, 1912.

V. F. JEWETT, Esq., *Clerk of the Committee on Taxation.*

DEAR SIR:— Your communication of March 6 states that you desire my opinion “concerning the constitutionality of the repayment of the franchise tax for 1910 to the New York, New Haven & Hartford Railroad as set forth in House Bill No. 508.” The bill to which you refer is a proposed resolve to provide for the repayment by the Commonwealth of a sum erroneously paid as taxes by the New York, New Haven & Hartford Railroad Company, and is as follows:—

Whereas, on September fifteen, nineteen hundred and nine, the New York, New Haven and Hartford Railroad Company executed an instrument purporting to convey its real estate in Park Square in the city of Boston to Moses Williams and others, as trustees, and whereas the said trustees paid the tax on the said property levied by the city of Boston for the year nineteen hundred and ten, the said property being valued by the city at the sum of four million four hundred and seventy-two thousand dollars, and whereas on May sixteen, nineteen hundred and eleven, the supreme judicial court of the commonwealth rendered a decision that the said deed of conveyance was null and void, then making the said corporation liable to repay the said tax to the said trustees and then also entitling the said corporation to an abatement of part of the franchise tax paid to the commonwealth by the said corporation for the year nineteen hundred and ten, now, therefore, be it

Resolved, That the treasurer of the commonwealth shall pay to

the said corporation a sum equivalent to the sum which would have been deducted from the franchise tax of the said corporation for the year nineteen hundred and ten, had not the said deed of conveyance been made, with interest from the date of the payment of the said tax in the year nineteen hundred and ten, until the date when this resolve takes effect.

The facts upon which your inquiry is based are substantially recited in the preamble to the proposed resolve. The New York, New Haven & Hartford Railroad Company having in its possession certain real estate formerly occupied as a station at Park Square in the city of Boston, rendered unavailable for railroad purposes by the erection of the terminal passenger station and other changes made under the provisions of St. 1896, c. 516, on Sept. 15, 1909, conveyed said real estate to certain trustees, subject to the terms, conditions and trust contained in a declaration of trust bearing the same date. These trustees, who had full power in the premises, were to develop the property and dispose of it for the benefit of the holders of shares, which, to the number of 52,000, the trustees were authorized to issue to the New York, New Haven & Hartford Railroad Company in payment for the real estate so conveyed. The tax in question was assessed and paid under the provisions of St. 1909, c. 490, Part III., §§ 40—43, and as the Park Square property stood in the name of the trustees and was taxed to them by the city of Boston, the New York, New Haven & Hartford Railroad Company did not include it in its statement of the works, structures, real estate, machinery, underground conduits, wires and pipes owned by it and subject to local taxation as required by section 40 above referred to, and it was not, therefore, deducted from the amount of the franchise tax as authorized by section 41. Upon May 16, 1911, the Supreme Judicial Court of the Commonwealth, in the case of *Williams v. Johnson*, 208 Mass. 544, a proceeding brought by a stockholder of the New York, New Haven & Hartford Railroad Company, handed down a decision holding that the disposition of the Park Square property of the New York, New Haven & Hartford Railroad Company was *ultra vires*, that the deed of said company to the trustees was beyond the power of the corporation or the directors to make, and that the trustees took no valid title under it. If the invalidity of the transfer of the title had been known at the time when the tax for the year 1910 was assessed, the com-

pany would have been entitled to have the value of the Park Square property deducted from the value of its corporate franchise in determining the amount of franchise tax, and if such invalidity had been discovered within six months after the payment of said tax, the corporation might have secured a proper deduction by a petition to the Supreme Judicial Court, as provided in section 70 of Part III. of chapter 490, but since more than six months have elapsed from the date of payment of the tax there is now no legal remedy open to the corporation.

Upon these facts, I reply to your specific inquiry as follows:—

It is well established that the Legislature may appropriate money raised by taxation only for a public purpose. *Lowell v. Boston*, 111 Mass. 454; *Kingman et al., petitioners*, 153 Mass. 566; Opinion of the Justices, 186 Mass. 603, 605; Opinion of the Justices, 190 Mass. 611, 613.

Among those purposes which are generally recognized as public, and for which money raised by taxation may be expended, is the fulfilment of moral obligations, so-called, resting upon the sovereign, which cannot be enforced or required by any legal procedure; and it has been held that where a claim grows out of general principles of right and justice and is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, it may be fulfilled although the claim could obtain no recognition in a court of law. *United States v. Realty Company*, 163 U. S. 427, 440.

How far the Legislature of this Commonwealth may go in recognizing moral obligations by the appropriation of money raised by taxation has never been determined by the courts, although in *Earle v. Commonwealth*, 180 Mass. 579, in speaking of such an appropriation to be recovered as damages for a kind of injury for which it was unnecessary to provide compensation, Mr. Justice Holmes observed that "some latitude is allowed to the Legislature. It is not forbidden to be just in some cases where it is not required to be by the letter of paramount law." Such obligations have been very generally recognized in the past by legislative acts appropriating money to compensate individuals for injuries received or property destroyed in the public service (see, for example Resolves of 1910, c. 102; Resolves of 1909, c. 137; Resolves of 1908, cc. 49, 52, 55, etc.); or to afford compensation for other less definite and certain claims (see Resolves

of 1906, c. 61; Resolves of 1905, c. 55; Resolves of 1904, c. 49; Resolves of 1903, cc. 36, 77, 83; Resolves of 1902, cc. 11, 57), and no question appears to have been raised with respect to them.

This recognition has been expressly extended to the reimbursement for money paid into the treasury of the Commonwealth under a misapprehension of fact. Thus, Resolves of 1907, c. 19, provides for the payment to the town of Dalton of \$2,618.76, said amount "having been paid by the town . . . for the support of a State charge under a misapprehension of facts." And see Resolves of 1904, c. 78. Even more closely in point is Resolves of 1907, c. 36, which provided for reimbursing the Mexican Central Railway for taxes inadvertently assessed, which had been paid into the treasury of the Commonwealth, and for the recovery of one of which a petition had been brought under St. 1903, c. 437, § 84, upon which the court had held the assessment invalid. *Mexican Central Railway v. Commonwealth*, 192 Mass. 129.

Although the court has never precisely defined the limits of the power of the General Court with respect to the recognition of claims such as that presented by the proposed resolve in favor of the New York, New Haven & Hartford Railroad Company, if the Legislature shall determine that the facts submitted in connection with said resolve impose upon the Commonwealth a moral obligation of the character of that recognized in the case of the Mexican Central Railway Company, or in other cases cited where municipalities or individuals have been reimbursed for money paid under a mistake of fact or law, I am of opinion that it may make a sufficient appropriation to discharge said obligation.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Constitutional Law — Elections — Voting Machines, Ballot Boxes and Counting Apparatus — Examination by State Ballot Law Commission — Delegation of Legislative Authority.

A provision in a proposed act relating to the use of voting machines, that "the State Ballot Law Commission shall also constitute the State Board of Voting Machine Examiners, and shall at such times, under such conditions and after such public notice as they shall determine, examine voting machines, ballot boxes and counting apparatus, and they shall make and file with the Secretary of the Commonwealth their report on such machines, ballot boxes and counting

apparatus as in their judgment conform to the requirements of law, together with such written or printed descriptions and such drawings, specifications and photographs as shall clearly identify such machines," does not vest in or impose upon the State Ballot Law Commission any powers and duties which involve a delegation of legislative authority which would be objectionable upon constitutional grounds.

The provision above quoted does not directly require the State Ballot Law Commission to approve only such machines as fulfil the requirements of the primary law, but indirectly requires such approval, since they are required to make and file their report only on such machines, ballot boxes and counting apparatus as in their judgment conform to such requirements.

MARCH 13, 1912.

JOHN A. CURTIN, Esq., *Clerk, Committee on Election Laws.*

DEAR SIR: — By a vote, the Committee on Election Laws has submitted to me certain specific inquiries with relation to the draft of an act now pending before said committee, entitled "An Act relative to the examination and use of voting machines, ballot boxes and counting apparatus." Section 1 of the proposed draft amends section 186 of chapter 560 of the Acts of the year 1907 by striking out the whole of said section and inserting in its place the following: —

No member of said commission (the state ballot law commission) shall hold any public office except that of justice of the peace or notary public, or be a candidate for public office, or member or employee of any political committee, or have any pecuniary interest, directly or indirectly, in any voting machine, ballot box or counting apparatus. If any member of the commission shall be nominated as a candidate for public office and shall not in writing decline said nomination within three days, he shall be deemed to have vacated his office as a member of said commission. The state ballot law commission shall also constitute the state board of voting machine examiners and shall, at such times, under such conditions, and after such public notice as they shall determine, examine voting machines, ballot boxes and counting apparatus, and they shall make and file with the secretary of the commonwealth their report on such machines, ballot boxes and counting apparatus as in their judgment conform to the requirements of law, together with such written or printed descriptions, and such drawings, specifications and photographs as shall clearly identify such machines, and the secretary of the commonwealth shall send a copy of each report on voting machines to every city and town clerk. For the purpose of such examination the said board may employ not more than three expert

machinists at a cost not exceeding ten dollars each for each day employed, to be paid from the appropriation for the expenses of the commission.

Section 2 provides as follows:—

Voting machines shall furnish convenient, simple and satisfactory means of voting and of ascertaining and recording the true result thereof with facility and accuracy, special regard being given to the prevention and detection of double voting; but no machine shall be approved which does not secure to the voter as much secrecy in voting as is afforded by the use of the official ballot. Ballot boxes shall have sufficient locks and keys or seal fastenings, and shall contain mechanical devices for receiving, registering and cancelling every ballot deposited thereon; but no such box shall record any distinguishing number or mark upon a ballot. No machine, ballot box or counting apparatus, except such as is approved in accordance with the provisions of this section, shall be used at any election, primary or caucus in this commonwealth; nor shall any such machines, ballot boxes or counting apparatus be used except in accordance with the provisions of this act.

The questions submitted for my consideration are —

First. — As to the constitutionality of the provision delegating the power to specify or to determine the requirements of voting machines, especially as to whether the machines would fulfill the requirements of our laws relating to primaries and elections.

Second. — Does the bill herewith submitted fully authorize and compel the commissioners named in the bill to approve only such machines as fulfill the requirements of our primary and election laws?

and you further state that —

If the bill does not, in your opinion, either in form or in substance fully cover the question that may arise, we should be very glad to have you make suggestions and draft of a bill that would fully cover the subject matter.

The purpose of the proposed bill is to vest in the State Ballot Law Commission the power to examine voting machines, ballot boxes and counting apparatus for the purpose of determining whether or not such appliances conform to the requirements of law which are substantially stated in section 2; and if the com-

mission determine that such appliances do conform to the requirements of law, it is made their duty to file with the Secretary of the Commonwealth their approval in writing thereof, together with a sufficient description to identify the particular kind of voting machine, ballot box or counting apparatus approved.

Subject to the limitation that the qualifications which entitle any person to vote in this Commonwealth and the right to elect and to be elected to public office which is consequent upon the possession of such qualifications, may not be altered or restricted, the Legislature may adopt any reasonable and uniform regulations in regard to the time and manner of exercising the right of voting, which are designed to secure and facilitate the exercise of such right in a prompt, orderly and convenient manner. *Capen v. Foster*, 12 Pick. 485, 488; *Kinneen v. Wells*, 144 Mass. 497; *Cole v. Tucker*, 164 Mass. 486.

The regulations in the proposed act with respect to the use of voting machines appear to be reasonable and uniform in their application, and are, therefore, open to no objection upon the ground that they constitute an interference with the constitutional right "to elect officers, and to be elected, for public employments." Art. IX., Declaration of Rights. Nor, in my opinion, do the powers and duties vested in and imposed upon the State Ballot Law Commission involve a delegation of the legislative authority which would be objectionable upon constitutional grounds. See Art. XXX., Declaration of Rights.

It is well established in this Commonwealth that while the Legislature may not delegate the general power to make laws conferred upon it by the Constitution, it may leave to a subordinate tribunal the determination of such details as the Legislature cannot well determine for itself in the carrying out of a legislative act. *Brodbine v. Revere*, 182 Mass. 598, 602; *Commonwealth v. Sisson*, 189 Mass. 247.

In the present instance, the examination of the various kinds of mechanical appliances for the purpose of determining which and how many of them conform to the requirements of the laws of the Commonwealth and may, therefore, be used in primaries and elections, is clearly a detail of administration the determination of which may properly be delegated by the Legislature to a subordinate tribunal.

In reply to your second inquiry, I am of opinion that the proposed act as submitted to me indirectly requires the State

Ballot Law Commission to approve only such machines as fulfil the requirements of the primary and election law, but does not directly do so, since they are required only to “make and file with the secretary of the commonwealth their *report* on such machines, ballot boxes and counting apparatus as in their judgment conform to the requirements of law.” I suggest in the interests of clearness that this provision be made to read that “they shall file with the secretary of the commonwealth their approval in writing of all machines, ballot boxes and counting apparatus which in their judgment conform to the requirements of law,” and that the words “and of the preceding” be inserted before the word “section” in line 15 of section 2 of the proposed act.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Board of Railroad Commissioners — Procedure — Questions of Law or Fact — Rulings.

The provision of St. 1906, c. 463, Part III., § 157, that the Supreme Judicial Court or the Superior Court shall have jurisdiction in equity “to review, annul, modify or amend the rulings of any State board or commission relative to street railways . . .” does not require the Board of Railroad Commissioners to make formal rulings upon questions of law or issues of fact with respect to which the performance of their duties does not call upon them to make a decision.

If, however, the determination of a question of law is involved in the decision of the Board upon any matter of administration properly before them, they may express such determination in the form of a ruling.

MARCH 19, 1912.

HON. ~~FREDERICK~~ J. MACLEOD, *Chairman, Board of Railroad Commissioners.*

DEAR SIR:— You have requested my opinion as to whether it is consistent with the functions of the Board of Railroad Commissioners to make specific findings upon certain requests for rulings presented to them by counsel under the circumstances set forth in your communication of March 11, as follows:—

In a communication dated Nov. 16, 1910, Hon. Walter Perley Hall, former chairman of this Board, requested the opinion of the Attorney-General upon certain questions arising in connection with two petitions then pending before this Board, one being the petition of the city of Worcester for approval of authority granted to the

Worcester Consolidated Street Railway Company to act as common carrier of baggage and freight in that city, and the other being the petition of the Worcester Merchants' Association that the Worcester Consolidated Street Railway Company be required to act as common carrier of baggage and freight in the city of Worcester. In reply to this communication an opinion was rendered by Hon. Dana Malone, Attorney-General at that time, under date of Dec. 27, 1910.

On Nov. 29, 1911, a conference was held by the Board in relation to the pending petition of the Worcester Merchants' Association, which was attended by representatives of the Worcester Merchants' Association and of the Worcester Consolidated Street Railway Company, and also by Mr. E. H. Vaughan, representing the city of Worcester. On Dec. 1, 1911, two sets of requests for rulings of law were filed by Mr. Vaughan, copies of which are enclosed herewith. Subsequently, on Dec. 4, 1911, the Board issued an order, a copy of which is also enclosed.

The statute under which this proceeding was instituted is St. 1907, c. 402, § 1, which provides that—

A street railway company may become a common carrier of newspapers, baggage, express matter and freight in such cases, upon such parts of its railway, and to such extent, in any city or town, as, after public notice and a hearing, upon the petition of any interested party, the board of aldermen or the selectmen in such city or town and the board of railroad commissioners shall by order approve. If the board of aldermen or selectmen to whom such a petition is presented act adversely thereon or fail to act within sixty days from the date of the filing of such petition the petitioner or any interested party may file such petition with the board of railroad commissioners, who shall after public notice and a hearing determine whether public necessity and convenience require the granting of such petition and shall make an order dismissing such petition or requiring any street railway company named in such petition to act as such common carrier in such cases, upon such parts of its railway and to such extent, and under such regulations and restrictions, as in the opinion of said railroad commissioners public necessity and convenience require. Any street railway company acting under authority hereof shall be subject to such regulations and restrictions as may from time to time be made by the local authorities aforesaid, with the approval of the railroad commissioners, and shall also be subject to the provisions of all laws now or hereafter in force relating to common carriers so far as they shall be consistent herewith and with said regulations and restrictions. The authority conferred upon any street railway company

by virtue of the provisions of this act may at any time be revoked or terminated in any city or town or upon any part of its railway, by the board of aldermen or selectmen with the approval of the board of railroad commissioners.

The principal contentions of the city of Worcester were, first, that the board of aldermen had not acted adversely and had not neglected to act within the meaning of the statute above quoted, and that the Board of Railroad Commissioners should have considered the petition which was originally presented to the board of aldermen and not the subsequent petition presented by the Worcester Merchants' Association; and, second, that as matter of law said Board was authorized to approve a limited franchise. In accordance with the opinion of the Attorney-General hereinbefore referred to, however, the Board took no action with respect to the petition of the Worcester Consolidated Street Railway Company, upon which the board of aldermen had acted, and issued an order in the usual form and without any limitation as to the duration of the franchise upon the petition presented by the Worcester Merchants' Association.

The rulings submitted for my consideration are obviously intended to raise the contentions of the city in various forms, doubtless with a view to further proceedings under the provisions of St. 1906, c. 463, Part III., § 157, which is as follows:—

The supreme judicial court or the superior court shall have jurisdiction in equity, upon the petition of a street railway company, or of the board of aldermen of a city or the selectmen of a town in which the street railway is located, or of any interested party, to compel the observance of and to restrain the violation of all laws which govern street railway companies, and of all orders, rules and regulations made in accordance with the provisions of this chapter by the board of aldermen of a city, the selectmen of a town or the board of railroad commissioners, and to review, annul, modify or amend the rulings of any state board or commission relative to street railways as law and justice may require.

See *Kilty v. Railroad Commissioners*, 184 Mass. 310.

It may be doubted whether the use of the word "rulings" in this section was intended to include rulings other than those necessarily involved in or inferred from the determination of administrative questions and the action of the Board consequent thereon, but even if it may be extended to formal rulings upon

questions of law requested by parties, the statute does not purport to *require* that such rulings shall be given by the Board. Moreover, I am of opinion that since the Board of Railroad Commissioners deal primarily with matters of administration, it may be said to be in general inconsistent with their functions to make formal rulings upon questions of law or issues of fact upon which the performance of their duties does not require them to make a decision. Upon the other hand, where the determination of a question of law is involved in the decision of the Board upon any matter of administration properly before them, I see no reason why they may not express such determination in the form of a ruling, and to that extent the making of rulings of law is consistent with the functions of the Board.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

*Conviction — Plea of Nolo — Case placed on File — Game Laws
— Violation — Certificate of Registration.*

A plea of nolo where the case is placed on file and such plea is not followed by a sentence or other form of final judgment, is not a "conviction" within the meaning of St. 1911, c. 614, § 11, which provides that "every person convicted of violating the game laws shall immediately surrender to the officer who secures such conviction his certificate of registration. . . ."

MARCH 19, 1912.

HON. GEORGE W. FIELD, *Chairman, Commissioners on Fisheries and Game.*

DEAR SIR:— Your communication of March 9 refers to St. 1911, c. 614, § 11, which provides that—

Every person convicted of violating the game laws shall immediately surrender to the officer who secures such conviction his certificate of registration; and the officer shall forthwith forward said certificate to the commissioners on fisheries and game, who shall cancel the same and notify the clerk issuing the certificate of registration of the cancellation. No other certificate of registration shall be issued to such person so convicted during a period of one year after the date of conviction.

and you inquire with reference thereto whether "in cases where the defendant pleads nolo and the case is placed on file, is it,

in your opinion, a conviction within the meaning of the statute, and should such a person be ineligible for a license within one year?"

In reply to this inquiry I have to advise you that in my opinion upon a plea of nolo, where the case is placed on file and said plea is not followed by any sentence or other form of final judgment, the person so pleading is not convicted within the meaning of the statute above cited, and the provision with respect to the issuance of a certificate of registration is not applicable.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Riot or Other Disturbance of the Public Peace — County, City or Town Authorities — Duties — Suitable Aid — Sheriff — Mayor — Selectmen — Precept — Discretion.

The public authorities of a county, city or town, in cases of a public disturbance with rioting or anticipated rioting, are required to use the utmost of the powers within their control for the enforcement of the laws and the preservation of the peace.

Since a sheriff, in cases where actual rioting exists or is imminently threatened, may require, under the provisions of R. L., c. 23, § 14, suitable aid in the preservation of the peace, he may under such circumstances call such assistance as a man of ordinary prudence, firmness and activity in his situation would think necessary to quell the existing or threatened disturbance.

In cases of existing or threatened rioting, the sheriff of a county, the mayor of a city or the selectmen of a town may issue a precept under the provisions of St. 1908, c. 604, §§ 142-150, directed to any commander of a brigade, regiment, battalion, corps of cadets, or company within his or their jurisdiction, requiring such commander to appear and aid the civil authority in suppressing violence and supporting the laws, the issuance of such precept being governed by the exercise of the sound discretion, good judgment and honesty of purpose of the sheriff or other local officer or officers in determining as a matter of fact whether or not the local police may be able to cope with the existing or threatened situation.

MARCH 20, 1912.

His Excellency EUGENE N. FOSS, *Governor.*

SIR:—Under date of March 19 Your Excellency requests my opinion upon the following question:—

In case of a public disturbance, with rioting or anticipated rioting, what are the rights and duties of town or city authorities, county

authorities (particularly the sheriff), the State police and the militia, with reference to maintaining order; and how far is it the duty of the local authorities to go before calling on the State?

Taking up first the duties of town, city and county authorities in a case such as is inquired of, they may be briefly and comprehensively stated to be the enforcement of the laws and the preservation of the peace. As to "how far is it the duty of the local authorities to go before calling on the State," it is impossible to answer by giving any precise formula applicable to every case, but it may be briefly stated to be the duty of the local authorities to use the utmost of the powers within their control in the enforcement of the laws and the preservation of the peace. Our laws recognize, however, that there may be occasions when town, city or county authorities may find it difficult or impossible in thus exercising their authority to perform their full duty merely by the local officials. In the case of actual rioting, from early times the sheriff has had authority as now prescribed by R. L., c. 23, § 14, which provides as follows:—

They [sheriffs] may require suitable aid in the execution of their office in a criminal case, in the preservation of the peace, in the apprehending or securing of a person for a breach of the peace and in cases of escape or rescue of persons arrested upon civil process.

The first use of the phrase "suitable aid" as above employed appears in chapter 20 of the Acts of the Province of Massachusetts Bay in the year 1698. The phrase should be construed, therefore, as giving the same authority as that of a sheriff under the common law, in the light of which it is to be interpreted unless otherwise modified by statute. Consideration of the decisions in that regard discloses in each case a situation where the breach of the peace was actually in progress, or where there had been an outbreak just previously, with another disturbance expected and imminent as a reasonable certainty. I am led to the conclusion that in order to warrant the sheriff in exercising this extraordinary remedy under his common-law authority, there must be a necessity for it because of disorders either existing at the time of his action or imminently threatened, with apparent certainty to occur.

In addition to R. L., c. 23, § 14, hereinbefore cited, R. L., c. 211, § 1, further provides:—

If twelve or more persons, being armed with clubs or other dangerous weapons, or if thirty or more persons, whether armed or not, are unlawfully, riotously or tumultuously assembled in a city or town, the mayor and each of the aldermen of such city, each of the selectmen of such town, every justice of the peace living in any such city or town and the sheriff of the county and his deputies shall go among the persons so assembled, or as near to them as may be with safety, and in the name of the commonwealth command all persons so assembled immediately and peaceably to disperse; and if they do not thereupon immediately and peaceably disperse, each of said magistrates and officers shall command the assistance of all persons there present in suppressing such riot or unlawful assembly and arresting such persons.

If there is, therefore, imminent, impending danger of a riot or other breach of the peace, the sheriff has the power and the duty to call such aid as a man of ordinary prudence, firmness and activity in his situation would think necessary to quell the disturbance. This use of the power to compel the aid and assistance of citizens in general is to be used only to quell a riot, but not to keep men for general police duty as occasion may require.

With reference to anticipated rioting, as well as rioting already existing, the statutes have provided another method which may be employed by either the selectmen of a town, the mayor of a city or the sheriff of a county. These provisions are found in St. 1908, c. 604, §§ 142–150, but so far as material to the purposes of the present inquiry are contained in sections 142 to 145, which provide as follows:—

SECTION 142. In case of a tumult, riot, mob, or a body of men acting together by force to violate or resist the laws of the commonwealth, or when such tumult, riot or mob is threatened and the fact appears to the commander-in-chief, to the sheriff of the county, to the mayor of the city or to the selectmen of the town, the commander-in-chief may issue his order, or such sheriff, mayor or selectmen may issue a precept, directed to any commander of a brigade, regiment, naval brigade, battalion, squadron, corps of cadets or company, within their jurisdiction, directing him to order his command, or a part thereof, to appear at a time and place therein specified to aid the civil authority in suppressing such violence and supporting the laws; which precept shall be in substance as follows:—

COMMONWEALTH OF MASSACHUSETTS.

To [insert the officer's title] A. B., *commanding* [insert his command].

Whereas, it appears to [the sheriff, mayor or the selectman] of the [county, city or town] of _____, that [here state one or more of the causes above mentioned] in our _____ of _____, and that military force is necessary to aid the civil authority in suppressing the same: Now, therefore, we command you that you cause [your command, or such part thereof as may be desired], armed and equipped with ammunition and with proper officers, to parade at _____ on _____, then and there to obey such orders as may be given according to law. Hereof fail not at your peril, and have you there this precept with your doings returned thereon.

This precept shall be signed by such sheriff, mayor or selectmen, and may be varied to suit the circumstances of the case; and a copy of the same shall immediately be forwarded by such sheriff, mayor or selectmen to the commander-in-chief.

SECTION 143. The officer to whom the order of the commander-in-chief or brigade commander, or such precept, is directed shall forthwith order the troops therein called for to parade at the time and place appointed, and shall immediately notify the commander-in-chief of his order, directly in the most expeditious manner, and by letter through the usual military channels.

SECTION 144. If an officer refuses or neglects to obey such order or precept, or if any officer or soldier neglects or refuses to obey an order issued in pursuance thereof, he shall be punished as a court-martial may adjudge.

SECTION 145. Such troops shall appear at the time and place appointed, armed, equipped, and with ball ammunition, and shall obey and execute such orders as they have received, or such additional orders as they may then and there receive from the governor, or from an officer serving under the provisions of section one hundred and forty-two.

With reference to the propriety of calling out the militia by the aforesaid precept by the selectmen of a town, the mayor of a city or the sheriff of a county, the Supreme Judicial Court has said, in the case of *Ela v. Smith*, 5 Gray, 121, in a learned and exhaustive opinion covering generally the subject-matter of the present inquiry:—

In exercising the authority thus conferred, the statute makes it the first duty of the mayor or other magistrate to determine whether the occasion for calling out a military force exists. This depends on a question of fact, which it is his exclusive duty to determine. If it be made to appear to him that a tumult or riot is threatened, he may then issue his precept. He is, in his official capacity, and

under the sanction of his oath of office, to examine and decide this question. This provision of the statute clearly confers a judicial power. Whenever the law vests in an officer or magistrate a right of judgment, and gives him a discretion to determine the facts on which such judgment is to be based, he necessarily exercises, within the limits of his jurisdiction, a judicial authority. So long as he acts within the fair scope of this authority he is clothed with all the rights and immunities which appertain to judicial tribunals in the discharge of their appropriate functions.

The same authority resting in the sheriff by the terms of the statute as in the mayor of a city, the language of this decision would equally apply to the powers and duties of the sheriff in that regard. In said decision the court further said:—

It cannot be urged, as a valid argument against the recognition of this authority in civil officers, that it is liable to abuse, and may be made the instrument of oppression. The great security against its misuse and perversion is to be found in the discretion, good judgment and honesty of purpose of those to whom important public duties are necessarily entrusted. But the existence of such authority is essential in a community where the first and most important use of law consists in preserving and protecting persons and property from unlawful violence.

To that part of Your Excellency's question which refers to the rights and duties of various public authorities, "with reference to maintaining order," I can perhaps do no better than to quote further from said decision, as follows:—

But while thus recognizing the authority of civil officers to call out and use an armed force to aid in suppressing a riot or tumult actually existing, or preventing one which is threatened, it must be borne in mind that no power is conferred on the troops, when so assembled, to act independently of the civil authority. On the contrary, they are called out, in the words of the statute, "to aid the civil authority," not to usurp its functions, or take its place. They are to act as an armed police only subject to the absolute and exclusive control and direction of the magistrates and other civil officers designated in the statute, as to the specific duty or service which they are to perform. The statute does not even enlarge the power of the civil officers by giving them any military authority; but only places at their disposal, in the exercise of their appropriate and legal functions, an organized, disciplined and equipped body of men, capable of more efficient action in an emergency, and among

a multitude, than an ordinary police force. Nor can the magistrate delegate his authority to the military force which he summons to his aid, or vest in the military authorities any discretionary power to take any steps or do any act to prevent or suppress a mob or riot. They must perform only such service and render such aid as is required by the civil officers. This is not only essential to guard against the use of excessive force and the exercise of irresponsible power; but it is required by the fundamental principles of our Constitution, which provides that "the military power shall always be held in an exact subordination to the civil authority, and be governed by it." Declaration of Rights, Art. XVII. It does not follow from this, however, that the military force is to be taken wholly out of the control of its proper officers. They are to direct its movements in the execution of the orders given by the civil officers, and to manage the details in which a specific service or duty is to be performed. But the service or duty must be first prescribed and designated by the civil authority.

It would therefore seem that the sheriff or other local officer should use sound discretion, good judgment and honesty of purpose in determining as a matter of fact whether or not the local police were able to cope with a situation such as is referred to in the present inquiry. Acting with these considerations in mind, such officer has the right to issue the precept provided for in said section 142 of chapter 604 of the Acts of 1908.

The reference in said inquiry to "the State police" I assume to mean the District Police, provided for by chapter 108 of the Revised Laws, and amendments thereof and additions thereto. Section 7 of said chapter provides as follows:—

The district police shall have and exercise throughout the commonwealth all the powers of constables, except the service of civil process, and of police officers and watchmen. The governor may at any time command their services in suppressing riots and in preserving the peace; but, except as aforesaid, a member of the inspection department shall not be required to perform any other duties than such as pertain to an inspector of factories and public buildings or to an inspector of steam boilers.

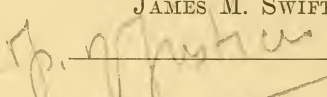
Whether or not the District Police shall be employed in a case such as is inquired of is a matter of policy and discretion to be determined by the exercise of the judgment of the person upon whom the duty falls to so determine, under the circum-

stances of each particular case. No specific rule or formula can be definitely given beyond the use of the best judgment possible under the circumstances at the time.

I am, with great respect,

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

See  *Constitutional Law — Money raised by Taxation — Appropriation — Public Purpose — Homes for Mechanics, Laborers or Other Wage Earners.*

A proposed bill authorizing the commission established by St. 1911, c. 607, to purchase in the name of the Massachusetts Homestead Commission and "for the purpose of providing homes for mechanics, laborers or other wage earners," and appropriating money therefor, would be unconstitutional if passed, since it involves the expenditure of public money for a private purpose.¹

MARCH 28, 1912.

WILTON B. FAY, Esq., *Committee on Ways and Means*.

DEAR SIR:— On behalf of the Committee on Ways and Means you have submitted for my consideration a draft of a bill entitled "An Act to extend and define the duties of the Homestead Commission," accompanying the special report of the Homestead Commission, House Document No. 441, and have orally brought to my attention certain inquiries with reference to the constitutionality of the provisions of said bill, with the request that I advise your committee thereon.

With reference to that part of section 3 which provides as follows:—

The treasurer and receiver-general is authorized to loan the commission from time to time such sums as it may certify to him in writing to be necessary to carry out the purposes of this act, except for the expenses incurred under section five, from the funds deposited by the savings banks in the treasury of the commonwealth under the provisions of section fifty-six of chapter five hundred and ninety of the acts of the year nineteen hundred and eight, and subject to the restrictions of said act —

I am of the opinion that there is no constitutional objection. Said money in the hands of the Treasurer is public money available for public purposes, according to law. If the purpose

¹ See 211 Mass. 624.

for which it is to be expended in this case is a lawful, public purpose it may be deemed available, as provided in said section.

As to section 1 of said bill, which provides as follows:—

The commission established by chapter six hundred and seven of the acts of nineteen hundred and eleven shall be authorized to purchase in the name of the Massachusetts Homestead Commission a tract or tracts of land for the purpose of providing homes for mechanics, laborers, or other wage-earners, and shall have authority to sub-divide, improve, build upon, lease, rent, sell, re-purchase, manage, and care for said tract or tracts and the buildings constructed thereon, in accordance with such terms and conditions as may be determined upon by the commission, due consideration being given to the proper laying out of streets, parks, garden areas, and buildings for recreation or other public purposes; and the commission shall make such regulations, restrictions, and reservations in contracts, leases, deeds, and otherwise as may be necessary for the protection of said tract or tracts from any objectionable use. Each person holding property under the jurisdiction of the commission shall be the owner of at least five shares of stock as hereinafter provided for, before being permitted to occupy or acquire title to any of said real estate; *provided, however*, that the commission in exceptional cases may temporarily waive the aforesaid requirement as to ownership of stock prior to occupancy —

different principles have to be considered. In the first place, the purpose stated in said section is “providing homes for mechanics, laborers or other wage-earners.” This limits the benefits of said act to certain definite classes, thereby taxing the public in general for a certain favored class, without disclosing any substantial reason for such class legislation. If this objection should be cured by an amendment which included any citizen instead of members of these particular classes, there remains the further and more fundamental question as to whether the expenditure provided for in this proposed act is an expenditure for public purposes.

The principle governing such consideration was long ago stated by the Supreme Court of this Commonwealth, in *Lowell v. Boston*, 111 Mass. 454 (see, also, *Loan Association v. Topeka*, 20 Wall. 655; Attorney-General's Report, 1910, p. 43). Among other things it was therein pointed out, at page 461:—

It is the essential character of the direct object of the expenditure which must determine its validity as justifying a tax, and not the

magnitude of the interests to be affected, nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion.

Applying the principle of that case to the bill under consideration, it appears that the direct object of the expenditure of the public money herein provided for is the purchase of land and the erection of homes for laborers, mechanics and wage-earners. The public benefit alleged is the improvement of the health and morals of the community. It appears, however, that this alleged public benefit is so remote and incidental that it cannot outweigh the real character of the direct object of the expenditure, which appears to be fundamentally for private rather than public purposes.

While I am of the opinion that under the limitation of the decisions as they now stand these provisions are unconstitutional, it is impossible for me to say how far our Supreme Judicial Court might go in approving legislation purporting to be enacted for the public welfare and for the betterment of health and morals, it being in each case largely a question of degree. There is at least grave doubt as to the constitutionality of said section 1.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Town — Note payable "during the Year 1912" — Date of Payment.

A note of a town payable "within the year 1912" is in effect a note payable at a future date certain, or earlier at the option of the maker, and therefore does not comply with the requirement of St. 1910, c. 616, § 1, that a town note shall state "the date when it will become due for payment."

APRIL 3, 1912.

CHARLES F. GETTEMY, Esq., *Director, Bureau of Statistics.*

DEAR SIR:— You have requested my opinion as to whether you may "properly certify a note of a town made payable 'within the year 1912,' under the provisions of chapter 616, Acts of 1910, section 1 of which provides that the note shall state 'the date when it will become due for payment.'"

A note payable "within the year 1912" is, in effect, a note payable at a future date certain, or earlier at the option of the

maker, and so is not payable at any fixed or determinable future time. *Mahoney v. Fitzpatrick*, 133 Mass. 151; *Stults v. Silva*, 119 Mass. 137; *Way v. Smith*, 111 Mass. 523. And see *Richards v. Barlow*, 140 Mass. 218. It does not comply, therefore, with the requirement of St. 1910, c. 616, § 1, that a town note shall state "the date when it will become due for payment," and you should not certify it.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

License — Engineer — Steam Boiler — Owner or User — Operation — Unlicensed Person — Coal Shovelers.

The provision of R. L., c. 102, § 8, as amended by St. 1907, c. 373, § 1 and St. 1911, c. 562, § 1, that "the owner or user of a steam boiler or engine . . . shall not operate or cause to be operated a steam boiler or engine for a period of more than one week, unless the person in charge of and operating it is duly licensed," allows such owner or user, in the exercise of good faith and in an unavoidable emergency, a period of one week within which to procure a person licensed in accordance with the requirements of law; and by the use of such period, the owner or user is not thereafter forever prohibited from availing himself under like conditions of such allowance.

The provision of R. L., c. 102, § 80, as amended by St. 1911, c. 562, § 2, that "to work with a licensed person there may be employed not more than one unlicensed person, who, in the presence and under the personal direction of the licensed person, may operate the appurtenances of a boiler or engine," does not require that coal shovelers, whose sole duty consists in putting coal under the boiler, should be licensed, since coal shovelers, or other persons performing the duties of mere laborers in handling coal used in the operation of a boiler or boilers, are not operating any appurtenances thereof.

APRIL 8, 1912.

J. H. WHITNEY, Esq., *Chief of the District Police*.

DEAR SIR:—Under date of April 6 you have written me with reference to sections 78, 79 and 80 of chapter 102 of the Revised Laws, as amended by chapter 373 of the Acts of 1907 and by chapter 562 of the Acts of 1911, requesting my opinion upon the following matters:—

First, the last clause of section 78 reads as follows:—

The owner or user of a steam boiler or engine, other than boilers or engines above excepted, shall not operate or cause to be operated a

steam boiler or engine for a period of more than one week, unless the person in charge of and operating it is duly licensed.

Is it to be understood that the owner or user of a steam boiler or engine, who from necessity has employed a person not duly licensed for a period of one week, is forever after prohibited from such provision of section 78 in connection with the use of the same boiler or boilers; or could he be permitted, after a reasonable period of time, to again take advantage of this provision?

Second, the last clause of section 80 reads as follows: —

provided, however, that to work with a licensed person there may be employed not more than one unlicensed person who, in the presence and under the personal direction of the licensed person, may operate the appurtenances of a boiler or engine.

Under the provisions of this clause are we to understand that there must be one licensed fireman who operates the appurtenances of a boiler, and who is allowed one helper, who may be unlicensed, to operate any appurtenances of a boiler or boilers, and also that an unlimited number of coal shovelers may also be employed, whose duty solely consists in putting coal under the boiler in a large boiler plant?

In my opinion with reference to the first inquiry, your suggestion of a possible construction that the owner or user of a steam boiler, who had employed a person not licensed for the period of one week, might be forever after prohibited from taking advantage of the provision of section 78 in that regard, would be a most unreasonable construction. Taking said section 78 in connection with section 79, which provides that —

If such steam engine or boiler is found to be in charge of or operated by a person who is not a duly licensed engineer or fireman and, after a lapse of one week from such time, it is again found to be operated by a person who is not duly licensed, it shall be deemed *prima facie* evidence of a violation of the provisions of the preceding section —

It is obvious that this provision was intended for emergencies, so that a person in the exercise of good faith, and in an unavoidable emergency, might be allowed one week in which to provide himself with a licensed person within the requirements of the law. The object of the provision would not be accomplished if the right therein given is exhausted by its operation for one week and then forever prohibited.

With reference to the second inquiry, the question seems to be practically governed by an opinion of Attorney-General Knowlton, II Op. Attys.-Gen., 62. I am of the opinion that within the limits of your inquiry there must be one licensed person, either fireman or engineer, who operates the appurtenances of a boiler, and who is allowed one helper who may be unlicensed. There may also be an unlimited number of coal shovelers, whose duty consists solely in putting coal under the boiler. It was ruled in said opinion of Attorney-General Knowlton "that licenses are not required for mere laborers, whose duties require no skill and involve no responsibility."

Since that opinion the statute has been changed so that it provides that it shall be unlawful for any person to have charge of or to operate the *appurtenances* of a boiler as well as the boiler or engine itself. This does not, in my opinion, change the conclusion reached by Attorney-General Knowlton. I know of no use of the word "appurtenances" which would include coal within that term. Coal shovelers or coal hoisters, or other persons performing duties of mere laborers with reference to the coal used in the operation of boilers, are not in my opinion operating any appurtenances thereof.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Constitutional Law — Police Power — Competition — Purpose to injure or destroy Business of a Rival — Discrimination — Lowering of Prices in one Locality by a Person, Firm, Association or Corporation engaged in Business in Several Localities — "Unfair Discrimination."

The purpose to injure or destroy the business of a rival by competition is not illegal.

A proposed act providing that "any person, firm, association or corporation . . . engaged in the production, manufacture or distribution of any commodity in general use, that shall intentionally, for the purpose of destroying the business of a competitor in any locality, discriminate between different sections . . . of this Commonwealth, or between purchasers, by selling such commodity at a lower rate for such purpose in one section . . . than is charged in another section . . . shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful", in effect renders unlawful all competition in any locality entered into for the purpose specified by a person, firm, association or corporation carrying on business in more than one such locality.

The prohibition in such proposed act is not limited to discrimination entered upon maliciously or for the purpose of destroying the business of competitors in order to create a monopoly or for any other illegal purpose, and therefore discloses no sufficient distinction between the acts of discrimination prohibited and other acts of discrimination or competition not prohibited to justify such prohibition as a valid exercise of the police power.

Such proposed act, therefore, if passed, would be unconstitutional and void.

APRIL 23, 1912.

JOHN G. BRACKETT, Esq., *Chairman of the Committee on Bills in the Third Reading.*

DEAR SIR:— On behalf of the Committee on Bills in the Third Reading you have submitted for my consideration a proposed bill entitled “An Act to prohibit discrimination in the sale of commodities,” and requested my opinion upon its constitutionality.

The first section of the bill in question is as follows:—

Any person, firm, association or corporation, foreign or domestic, doing business in the commonwealth of Massachusetts and engaged in the production, manufacture or distribution of any commodity in general use, that shall intentionally, for the purpose of destroying the business of a competitor in any locality, discriminate between different sections, communities, towns or cities of this commonwealth, or between purchasers, by selling such commodity at a lower rate for such purpose in one section, community, town or city than is charged for said commodity by the vender in another section, community, town or city in the commonwealth, after making due allowance for the difference, if any, in the grade or quality and in the cost of transportation, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

There are other sections which define offences, provide for their prosecution and prescribe penalties, but in view of the conclusion hereinafter stated it is unnecessary to refer to them in detail.

The bill is undoubtedly designed to invoke the police power to prohibit a discrimination in prices between different localities in the Commonwealth, or between purchasers in different localities, where prices have been lowered in one locality for the purpose of destroying the business of a competitor in such locality, and in effect to render unlawful competition in a single locality entered into by a person, firm, association or corporation

carrying on business in more than one locality. Like discrimination, induced by any other purpose or motive, is not illegal.

The fundamental question presented by the inquiry of the committee is, therefore, whether the definition of unfair discrimination in the section of the bill above quoted is grounded upon a reasonable distinction with reference to other forms of discrimination or competition so as to permit a valid exercise of the police power in the premises.

As above stated, discrimination is "unfair," and therefore prohibited, only when it arises from a lowering of prices in a given locality "intentionally, for the purpose of destroying the business of a competitor;" but since in the conduct of business competition, which gives to one what it takes from another, must inevitably result in the destruction in whole or in part of the business of a rival, the specified purpose, to a greater or less extent, is inseparable from all competition. In itself, moreover, the purpose to injure the business of a rival by competition is not illegal. *Martell v. White*, 185 Mass. 255, 260; *Plant v. Woods*, 176 Mass. 492, 501; *Bowen v. Matheson*, 14 Allen, 499. And see *Commonwealth v. Hunt*, 4 Met. 111, 134. And this is true even where the injury sought to be accomplished is the destruction of the business and the consequent ruin of a competitor. *Martell v. White*, *supra*, p. 261. It follows, therefore, that neither the act of discriminating nor the purpose which brings the act within the prohibition of the bill, if separately considered, is illegal. On the contrary, the public policy of the Commonwealth has recognized and justified competition in business and has expressly declared that every contract, agreement or combination which restrains or prevents competition in the supply or price of any article or commodity is against public policy and is illegal and void. St. 1908, c. 454. See *Vegelein v. Guntner*, 167 Mass. 92; *Commonwealth v. Hunt*, 4 Met. 111, 134.

The police power extends to all matters which affect the lives, limbs, health, comfort and welfare of all in their persons and property (*Commonwealth v. Bearce*, 132 Mass. 542, 546) and the Legislature may enact "such reasonable regulations as they may judge necessary to protect public and private rights, and to impose no larger restraints upon the use and enjoyment of private property, than are in their judgment strictly necessary to preserve and protect the rights of others." *Commonwealth v. Alger*, 7 Cush. 53, 102.

There are, however, limitations upon this power. Thus, in *O'Keeffe v. Somerville*, 190 Mass. 110, the court, in speaking of the regulation of the ordinary transactions of business (in this case the imposition of an excise tax upon the selling or giving of trading stamps in connection with the sale of articles, which was held invalid), said, at page 114: —

One of the reasons why these methods are allowable is found in the familiar principle that constitutional liberty means "the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation." The restrictions upon conduct which may be imposed in the exercise of the police power include everything that may be necessary in the interest of the public health, the public safety or the public morals, and they include nothing more. These doctrines have often been discussed and elaborated, and it is unnecessary to consider them at length in this case.

To constitute the bill now before me a proper exercise of the police power, therefore, it must appear that the public health, the public safety or the public morals require protection against competition when it takes the form of a discrimination in the price of a commodity between localities or purchasers in different localities which is unnecessary where competition does not result in such discrimination. The right primarily protected is the right of the competitor in a locality against which the discrimination is directed to be free from competition, a right which does not exist at common law (*Walker v. Cronin*, 107 Mass. 555; *Martell v. White*, 185 Mass. 255), and which contravenes the established public policy of the Commonwealth. Such being the purpose and effect of the bill submitted to me, I am constrained to say that in its present form it discloses no sufficient distinction between the acts prohibited and other forms of competition which the law not only permits but encourages, and that in my opinion, if enacted, it would not constitute a valid exercise of the police power.

Legislation, substantially like the bill now before your committee, has been twice considered by courts of last resort. In *State v. Drayton*, 82 Nebr. 254, a statute almost identical in terms was upheld upon the ground that it "was enacted for the purpose of supplying a defect in the anti-trust laws of the State," upon an information charging that the defendant "did unlawfully, maliciously and intentionally, for the purpose of

destroying the business of a competitor . . . discriminate between different sections of the State," and both the prosecuting officer and the court treated the statute as if the word "maliciously" was a part of it, and as if the purpose which made the discrimination unfair and therefore unlawful was the purpose of destroying the business of a competitor "in order that the wrongdoer may have a monopoly" (page 264).

In *State v. Central Lumber Co.*, 24 So. Dak. 136, the statute under consideration made discrimination unlawful when such discrimination was for the purpose of "destroying the competition of any regular, established dealer . . . or to prevent the competition of any person who in good faith intends and attempts to become such dealer," and the court again treated the statute as if it were directed against monopolies.

If the bill in question were in terms directed against discrimination entered upon maliciously or for the purpose of destroying business in order to create a monopoly, a very different question would be presented, and if enacted, it might well be treated as supplying a defect in the anti-trust laws of the Commonwealth. No such limitation, however, is to be found in it in its present form. Section 1 doubtless includes a person, firm, association or corporation which discriminates in prices for the purpose of creating a monopoly, but it also extends to and includes persons who discriminate in the course of lawful and proper competition, with the purpose of destroying the business of competitors, so far as competition may destroy it, for their own benefit, without any malicious or unlawful intent to injure the public by creating a monopoly in the sale of the commodities in which they deal. This unlawful purpose is, in my opinion, essential to distinguish the acts sought to be prohibited and to afford a reasonable basis for regulation under the police power.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

*Constitutional Law — Amendment to Constitution — Taxation
— Wild or Forest Lands — Standing Wood and Timber.*

A proposed constitutional amendment, giving to the General Court full power and authority "to prescribe for wild or forest lands such methods of taxation as will develop and conserve the forest resources of the Commonwealth," if adopted would permit the enactment by the Legislature of taxation laws with reference to woodlands and

wood lots without regard to their size so long as said wood lots or woodlands were wild and forest lands; that is, in a state of nature and uncultivated except for the purpose of producing wood and timber.

The term "wild or forest lands" does not include a tract of woodland located within fence premises of which the principal use is for pasturage.

The technical signification of the term "wild or forest lands" has never been established or defined by the courts of this Commonwealth. The term "standing wood and timber" has not received, either in the statutes of this Commonwealth or in the decisions of the court, a fixed or technical definition of universal or even of general application.

The proposed amendment to the Constitution, which would confer upon the General Court full power and authority to prescribe for wild or forest lands "such methods of taxation as will develop and conserve the forest resources of the Commonwealth," would authorize the enactment of laws to provide that wild or forest lands should be taxed without reference to the element of value contributed by the growth thereon, and that the tax upon the value of such growth might be reduced or altogether omitted in the determination of the tax to be assessed upon said lands.

MAY 1, 1912.

HON. GRAFTON D. CUSHING, *Speaker of the House of Representatives.*

SIR:—I have the honor to acknowledge the receipt of an order adopted by the Honorable House of Representatives on April 12, requesting my opinion upon certain questions "in respect to the constitutional amendment, relative to the taxation of wild or forest lands, now pending in the House of Representatives and contained in House Resolve No. 1982." This resolve, which was duly passed by the Legislature of last year, is as follows:—

Full power and authority are hereby given and granted to the general court to prescribe for wild or forest lands such methods of taxation as will develop and conserve the forest resources of the commonwealth.

The specific questions submitted to me by the Honorable House of Representatives are as follows:—

1. Does the amendment as at present drafted include all wood lots and woodlands irrespective of their size?
2. Does the amendment as drawn discriminate against small wood lots and include only large tracts of woodland?

3. Does the term "wild land" include small wood lots?
4. Does the amendment as drawn permit the enactment of taxation laws by the Legislature with reference to wood lots and woodlands regardless of their size?
5. Does the term "wild or forest lands" include a tract of woodland located within fenced premises whose principal use is for pasturage?
6. Is the term "wild or forest lands" a term of well-known legal signification established by any decision of any court of last resort in the United States?
7. Is the term "standing wood and timber" a term of well-known legal signification established by various decisions of courts of last resort in the United States?
8. Does the amendment as drawn permit the enactment of laws to tax the land and exempt or reduce the tax on the growing timber which stands upon it?

The proposed amendment is broad in terms and is designed to afford the Legislature comprehensive authority to adopt for wild or forest lands such methods of taxation as in their judgment may best develop and conserve the forest resources of the Commonwealth. So far as I am aware, the term "wild or forest lands" has never been precisely defined by either the court or the Legislature of this Commonwealth, but the term "wild land" is well known to the law, and has been often discussed and its signification definitely determined in connection with writs of dower and writs of entry or actions of tort for trespass. In these connections it has been defined as land in a state of nature, and includes marsh land, sprout land and woodland. *Conner v. Shepherd*, 15 Mass. 164; *Webb v. Townsend*, 1 Pick. 21; *Richmond Iron Works v. Wadhams*, 142 Mass. 569. Such land does not cease to be wild land, even when used as an appendage to a cultivated farm for the purpose of procuring fuel and timber. *White v. Willis*, 7 Pick. 143; *White v. Cutler*, 17 Pick. 248. The term "forest land" does not seem to have been directly considered by the court. As used in the proposed amendment, above quoted, however, it probably does not differ greatly in meaning from the term "wild land," which precedes it. The word "forest," alone, has been defined to be —

A tract of land covered with trees; a wood, usually one of considerable extent; a tract of woodland with or without enclosed intervals of open and uncultivated ground. — CENTURY DICTIONARY AND CYCLOPÆDIA.

In the case of *White v. Cutler*, 17 Pick. 248, Chief Justice Shaw, in discussing the right of dower of a widow in wild and uncultivated land, uses the terms "forest lands" and "woodlands" interchangeably: —

These reasons apply as well to the case of a wood lot situated in the midst of a cultivated country, as to forest lands in their original state. But the chief justice, in delivering the opinion of the court in this case (*Conner v. Shepherd*, 15 Mass. 164), takes care in terms to limit its operation to the case of woodlands not used or connected with a cultivated farm, or other improved estate.

It is well established that wild land does not lose its character by being kept and used by its owners for the purpose of raising wood for profit. *White v. Cutler*, 17 Pick. 248. See *Slater v. Jepherson*, 6 Cush. 129; *Morris v. Callanan*, 105 Mass. 129. In my opinion the term "wild land," as defined by the court, would include forest land, with the possible exception that the term "forest lands" may include land planted and cultivated for the purpose of producing trees in sufficient numbers to constitute such land forest land.

Replying specifically to the first, second, third and fourth questions submitted by the Honorable House of Representatives, I am of opinion that the amendment as at present drafted would permit the enactment by the Legislature of taxation laws with reference to wood lots and woodlands, without regard to their size, so long as said wood lots or woodlands were wild or forest lands within the definition already made; that is, land in a state of nature, and uncultivated except for the purpose of producing wood and timber. It is to be observed that the amendment as at present drafted is permissive only, and, strictly speaking, cannot be said to include or exclude any particular kind or class of wood lots or woodlands. The foregoing answer, however, is based on the assumption that the Honorable House of Representatives desires my opinion upon the question of whether or not said amendment would permit the enactment of laws which should include wood lots and woodlands without reference to their extent.

It has been held upon a writ of dower that wood and pasture land occupied as such and used in connection with a homestead should not be considered as wild and uncultivated land (*Shattuck v. Gragg*, 23 Pick. 88), and it is, in my opinion, at least

doubtful if the term "wild or forest lands" would be held to include a tract of woodland located within fenced premises, of which the principal use was for pasturage. The question presented is chiefly one of fact, to be determined by the circumstances in each particular case. Speaking generally, however, and upon the assumption that the principal use of the tract is for pasturage, which is more or less inconsistent with the production and growth of forests, I am of opinion that the fifth question of the Honorable House of Representatives should be answered in the negative.

In respect to the sixth question of the Honorable House of Representatives, I have already stated that the courts of this Commonwealth have never established and defined the technical signification of the term "wild or forest lands," and I am not aware nor have I been advised of any decision of a court of last resort in any other State which establishes a general legal signification of that precise term.

To the seventh inquiry submitted by the Honorable House of Representatives I reply as follows: the terms "standing wood" and "standing timber" have been frequently defined by courts of last resort in the several States, but such decisions have been directed to the construction of the respective terms in specific legislative enactments, in deeds or grants, or in contracts, and have defined such terms with reference to the context in which they are found and to the purpose which the instrument was designed to accomplish, and so do not establish for them fixed and definite legal significations which would be applicable wherever the words may be found. Thus, for example, in *Strout v. Harper*, 72 Me. 270, where it was held that in a deed a reservation of "all the standing wood upon the lot, together with the right to enter and remove the same at any time within three years," included trees suitable for timber as well as trees suitable only for fuel, the court saying (page 273):—

True, the word "wood" is often used to designate fuel. But when so used it means fuel wholly, or, at least, partially, prepared for the fire. The term "standing wood" cannot be so used. It can apply only to trees. And when there is nothing in the context, or in any other part of the deed, to indicate that it is used in a more limited sense, we think it must be held to include all the trees,—trees suitable for timber as well as those fit only for firewood.

And see *Shiffer v. Broadhead*, 126 Penn. St. 260; *Haskell v. Ayers*, 35 Mich. 89; *Wilson v. State*, 17 Tex. App. 393; *O'Hanlan v. Denvir*, 81 Cal. 60; *Donworth v. Sawyer*, 94 Me. 242. In this Commonwealth standing wood and timber are mentioned occasionally in the statutes. See R. L., c. 134, § 11; c. 208, § 7; St. 1869, c. 249. And more frequently in the decisions of the court. See *White v. Foster*, 102 Mass. 375; *Drake v. Wells*, 11 Allen, 141; *Fletcher v. Livingston*, 153 Mass. 388; *Worthen v. Garno*, 182 Mass. 243. But the term "standing wood and timber" has not received, either in the statutes or in the opinions of the court, a fixed or technical definition of universal, or even of general, application.

The eighth inquiry of the Honorable House of Representatives is so phrased as to leave me in some doubt as to the exact question upon which my opinion is desired. Limiting my reply to the precise terms of said inquiry, however, I have to advise the Honorable House of Representatives that the proposed amendment, which would confer upon the General Court full power and authority to prescribe for wild or forest lands "such methods of taxation as will develop and conserve the forest resources of the Commonwealth," would doubtless authorize the enactment of laws to provide that wild or forest lands should be taxed without reference to the element of value contributed by the growth thereon, and that the tax upon the value of such growth might be reduced or altogether omitted in the determination of the tax to be assessed upon said lands.

I am, with great respect,

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Gypsy and Brown-tail Moths — State Forester — Work of Destruction of Moths — Co-operation with Private Individuals — Supplies.

Under the provisions of St. 1905, c. 381, § 3, as amended by St. 1906, c. 268, § 1, and St. 1908, c. 591, § 1, providing that the superintendent for the suppression of the gypsy and brown-tail moth, among other things, "may act in co-operation with any person, persons, corporation or corporations, including other states, the United States or foreign governments," and "may devise, use and require all other lawful means of suppressing or preventing said moths," the State Forester, who succeeds to the powers of the

superintendent for the suppression of the gypsy and brown-tail moth under the provisions of St. 1909, c. 263, when actually engaged in the work of destroying such moths in a given locality may co-operate with adjacent landowners, who are carrying on work upon their own premises in conjunction with the public work, by furnishing them at cost supplies to be actually used in such work, or may authorize the local superintendent to furnish such supplies as his agent.

MAY 13, 1912.

FRANK W. RANE, Esq., *State Forester*.

DEAR SIR:—Your letter of May 2 submits for my consideration an inquiry as to whether, under the provisions of St. 1905, c. 381, § 3, you are authorized to permit local superintendents to sell supplies to property owners at cost, said supplies to be used only for the purpose of suppressing the gypsy and brown-tail moths on their own property. You state that with the approval of the Governor you have already established a supply store from which various articles used in the work of destroying the gypsy and brown-tail moths are furnished at cost prices to such cities and towns as are by law entitled to reimbursement from the Commonwealth.

The section of the statute to which you refer, as amended by St. 1906, c. 268, § 1, and St. 1908, c. 591, § 1, is as follows:—

The said superintendent shall act for the commonwealth in suppressing said moths as public nuisances, in accordance with the provisions of this act. For this purpose he shall establish an office and keep a record of his doings and of his receipts and expenditures, and may, subject to the approval of the governor, make rules and regulations governing all operations by cities, towns or individuals under this act. He may employ such clerks, assistants and agents, including expert advisers and inspectors, as he may deem necessary and as shall be approved by the governor. He may make contracts on behalf of the commonwealth; may act in co-operation with any person, persons, corporation or corporations, including other states, the United States or foreign governments; may conduct investigations and accumulate and distribute information concerning said moths; may devise, use and require all other lawful means of suppressing or preventing said moths; may lease real estate when he deems it necessary, and, with the approval of the board in charge, may use any real or personal property of the commonwealth; may at all times enter upon the land of the commonwealth or of a municipality, corporation, or other owner or owners, and may use all reasonable means in carrying out the purposes of this act; and, in

the undertakings aforesaid, may, in accordance with the provisions of this act, expend the funds appropriated or donated therefor; but no expenditure shall be made or liability incurred in excess of such appropriations and donations. The clerks, assistants and agents employed by said superintendent may at all times, in carrying out the purposes of this act, enter upon the land of the commonwealth or of a municipality, corporation or other owner or owners.

By St. 1909, c. 263, the powers of the superintendent for the destruction of gypsy and brown-tail moths were transferred to the State Forester.

The section quoted vests the State Forester with broad powers, and since, by St. 1905, c. 381, § 1, the pupæ, nests, eggs and caterpillars of the gypsy and brown-tail moths, as well as the moths themselves, are declared to be public nuisances, I see no reason to doubt that, when actually engaged in the work of destroying such moths in any stage of their development in a given locality, you may co-operate with adjacent owners who are carrying on, or may desire to carry on, private work upon their own premises in conjunction with the public work by furnishing them at cost supplies to be actually used in such work, or may authorize a local superintendent to furnish them as your agent.

Upon the other hand, I am of opinion that nothing in the section should be construed to authorize the indiscriminate sale of such supplies to private individuals upon the mere assumption that they are to be used in connection with work upon the premises of such individuals, and that the proper and safe rule to follow in the premises, if such supplies are to be so furnished, is to require them to be used upon work which is closely connected with some public work of the same character, and which may be subject to the general supervision of the State Forester or his agents.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Constitutional Law — Appropriation of Money raised by Taxation — Public Purpose — Reclamation and Sale of Wet Lands — Eminent Domain — Gratuity.

A proposed act providing, in substance, for the taking by eminent domain, at the assessed valuation thereof, of tracts of wet lands for the purpose of reclamation, which, after such taking and reclama-

tion, are to be cultivated for two years by the State Board of Agriculture and then sold at a price not less than the cost of such land plus the cost of reclamation, one-half of any sums received in excess of such total cost to be awarded to the original owner or owners of the land sold, and appropriating therefor the sum of \$10,000, might be held to contemplate the accomplishment of a public purpose which would warrant the exercise of the power of eminent domain and the appropriation of money raised by taxation, if, as matter of fact, the development and distribution for occupation of the land affected gave relief to a considerable and thickly settled agricultural region, and affected beneficially the community as a whole, throughout such region, as well as individuals who acquired the land itself.

So much of such proposed act as provides that one-half of any sum received by the Commonwealth upon disposing of reclaimed land, in excess of the cost of the land plus the cost of reclamation, shall be awarded to the original owner or owners thereof authorizes a payment which is in the nature of a gratuity, and would therefore be unconstitutional.

MAY 16, 1912.

HON. LEVI H. GREENWOOD, *President of the Senate.*

SIR: — By an order dated April 25, 1912, the Honorable Senate has required my opinion upon the following questions of law: —

1. If the bill entitled “An Act to provide for protecting the public health and promoting the general welfare by the reclamation of wet lands,” now pending in the Senate (printed as House No. 7, and amended by the Senate), should be enacted, would its provisions be constitutional?

2. Would it be constitutional to provide for the expenditure of \$10,000 from the treasury of the Commonwealth for the taking and improving of wet lands by the State Board of Health and by the Board of Agriculture, and for the exemption from taxation of such lands so long as the title thereto remains in the Commonwealth?

3. Is it possible that section 2, and especially the provisions of lines 6 and 7 of said section, providing that the rule of damages shall be the assessed valuation, would be unconstitutional?

4. Is it possible that section 6, and especially the provisions of line 5 of said section, providing that the Commonwealth may take, own and operate deposits of marl and peat, would be unconstitutional?

The proposed act is entitled “An Act to provide for protecting the public health and promoting the general welfare by the reclamation of wet lands,” and is as follows: —

SECTION 1. The sum of ten thousand dollars is hereby appropriated, to be paid out of the treasury of the commonwealth from the ordinary revenue of the current year, to constitute a fund called the Wet Lands Reclamation Fund, the same to be expended under the direction of the state boards of health and agriculture, in the manner and for the purpose hereinafter specified.

SECTION 2. The said board of health, with the approval of the governor and council, may take for the purposes of this act any tract or tracts of wet lands of two or more adjacent owners, except salt marshes, together with such dry land, if any, as may be necessary for access thereto, by eminent domain, at the assessed valuation of said lands.

Any person aggrieved by a taking as aforesaid may have his damage assessed in the manner provided by law in respect to the taking of land for public parks.

Title to lands so taken shall pass to the commonwealth, and they shall be exempt from taxation until sold as hereinafter provided.

SECTION 3. The said board, acting through such agent or agents as it shall appoint, shall proceed to drain and reclaim such lands, and for that purpose may purchase such machinery and equipments and execute such contracts, as the governor and council may approve, employing so far as may be practicable the labor of prisoners under regulations and conditions prescribed by the prison commissioners.

SECTION 4. When said lands, or any convenient part thereof, shall have been drained and reclaimed, the board of agriculture shall cause the same to be cultivated for not less than two successive seasons, in such a manner as, in the opinion of the board, shall best demonstrate the value thereof for agricultural uses.

SECTION 5. The said board of agriculture shall thereafter, at such time or times as it shall deem expedient, offer such lands for sale, in whole or in part, at a price not less than the cost of the land plus the cost of reclaiming the same.

One half of any sums received in excess of such total cost, shall be awarded to the original owner or owners of the land sold, and the other half of such excess shall be turned in to the treasury of the commonwealth until the original appropriation shall have been refunded. The remaining proceeds of such sales shall be returned to the reclamation fund, to be used for the reclamation of successive tracts in the manner hereinbefore provided.

SECTION 6. The town boards, acting jointly, may, in their discretion, reserve from sale any tracts containing marl, peat, or other deposits of commercial value, by the exploitation of which the cost of reclaiming the remainder may be reduced; and may lease or operate such reserved portions in any manner approved by the governor and council.

SECTION 7. This act shall take effect upon its passage.

The title of the bill recites that it is an act "to provide for protecting the public health and promoting the general welfare," but its provisions clearly contemplate not merely the exercise of the police power of the Commonwealth for the preservation of the public health or safety, since, by its provisions, the exercise is required of the governmental powers of eminent domain and taxation (see §§ 1, 2). Nor is it an exercise of the police power in providing reasonable regulations for the general advantage of the owners of wet or swampy lands. See R. L., c. 195, § 116; *Coomes v. Burt*, 22 Pick. 422; *Day v. Hurlburt*, 11 Met. 321; *Sherman v. Tobey*, 3 Allen, 7; *Wurts v. Hoagland*, 114 U. S. 606; *Head v. Amoskeag Manfg. Co.*, 113 U. S. 9. Acts of this character are not designed to accomplish a public purpose and do not involve an exercise either of the power of eminent domain or of the power of taxation. *Henry v. Thomas*, 119 Mass. 583, 584; *Lowell v. Boston*, 111 Mass. 454. It is well established that these latter powers may be invoked only where the purpose to be accomplished is a public purpose. *Lowell v. Boston*, 111 Mass. 454, 462; *Talbot v. Hudson*, 16 Gray, 417; Opinion of the Justices, 182 Mass. 607; Opinion of the Justices, 155 Mass. 601.

The first and most important question presented by the several inquiries of the Honorable Senate is whether or not the purpose of the proposed bill is a public purpose. The purpose stated in the title, that of protecting the public health, is not conclusive, for the reason that the public health might well be protected under the police power without recourse either to the power of eminent domain or to the power of taxation, since, if conditions warranted it, the wet lands might well be declared a public nuisance, and so abated at the expense of the persons benefited (see R. L., c. 75, §§ 75-85; *Grace v. Board of Health of Newton*, 135 Mass. 490), or might be abated under a statute like R. L., c. 195, § 116, upon the theory that all owners of contiguous property of this character were common proprietors and could be required to join in the work of reclamation and to pay a reasonable and proportionate part of the expense. It is obvious from a consideration of the bill, moreover, that the taking of lands for the purpose of drainage, the purchase of machinery for their development, and the experimental cultivation to "demonstrate the value thereof for agricultural uses," are not in any sense required for the protection of the public health, and that the primary, if not the only, object of the bill

is to secure the reclamation of the lands and their development so far as may be necessary to make them marketable. The purpose of the act, then, may fairly be said to be the acquisition and development of wet lands so as to make them, after development, fit for profitable occupation by the people of the Commonwealth or such of the people as may have opportunity to acquire them.

The exercise of the power of eminent domain in connection with the drainage of wet lands has been sustained. See *Coster v. Tide Water Co.*, 3 C. E. Green, 54, 518; *State v. Blake*, 7 Vroom, 447; *Talbot v. Hudson*, 16 Gray, 417. In the latter case the court sustained a statute (St. 1860, c. 211) which provided that a considerable tract of land situated in different towns and held by a large number of owners, which was flooded by reason of a dam maintained by private persons, might be reclaimed by the removal of the dam by commissioners appointed under the act, compensation being paid out of the treasury of the Commonwealth to the persons by whom the dam had been maintained. The court discusses at length whether or not the purpose for which the power of eminent domain was here exercised was a public purpose. Thus, at page 423: —

In many cases there can be no difficulty in determining whether an appropriation of property is for a public or private use. If land is taken for a fort, a canal or a highway, it would clearly fall within the first class; if it is transferred from one person to another or to several persons solely for their peculiar benefit and advantage, it would as clearly come within the second class. But there are intermediate cases where public and private interests are blended together, in which it becomes more difficult to decide within which of the two classes they may be properly said to fall. There is no fixed rule or standard by which such cases can be tried and determined. Each must necessarily depend upon its own peculiar circumstances. In the present case there can be no doubt that every owner of meadow land bordering on these rivers will be directly benefited to a greater or less extent by the reduction of the height of the plaintiffs' dam. The act is therefore in a certain sense for a private use, and enures directly to the individual advantage of such owners. But this is by no means a decisive test of its validity. Many enterprises of the highest public utility are productive of great and immediate benefits to individuals. A railroad or canal may largely enhance the value of private property situated at or near its termini; but it is not for that reason any less a public work, for the construction of which private

property may well be taken. We are therefore to look further into the probable operation and effect of the statute in question, in order to ascertain whether some public interest or benefit may not be likely to accrue from the execution of the power conferred by it upon the defendants. If any such can be found, then we are bound to suppose that the act was passed in order to effect it. We are not to judge of the wisdom or expediency of exercising the power to accomplish the object. The Legislature are the sole and exclusive judges whether the exigency exists which calls on them to exercise their authority to take private property. If a use in its nature public can be subserved by the appropriation of a portion of the plaintiffs' dam in the manner provided by this act, it was clearly within the constitutional authority of the Legislature to take it, and in the absence of any declared purpose we must assume that it was taken for such legitimate and authorized use.

The court, in sustaining the exercise of the power, referred to the statutes providing for the improvement of meadows, swamps and low lands as instances of the exercise of the power of eminent domain for purposes like that in the case at bar (page 428). The analogy, however, was denied in *Lowell v. Boston*, *supra* (see page 468), although the case was followed upon the principal question, the court, in *Lowell v. Boston*, saying (page 470):—

The main question was, whether the relief of an extensive territory of valuable lands, in a thickly settled agricultural region, from the nuisance of flooding by the waters of a stream, caused by a single dam below, constituted such an object of public concern as to justify the exercise of the power by removing the dam. The court recognized the difficulty that, so far as the removal of the dam benefited each land owner, it was a private use which would not justify the exercise of that power. But the obstruction in the stream injuriously affected "so large a territory, situated in different towns, and owned by a great number of persons," as to give it the character of a public nuisance, the removal of which "would seem to come fairly within the scope of legislative action." While we do not assent to the suggestions in that opinion, that the general provisions of law for the regulation of mills and the improvement of meadows are based upon the constitutional power to appropriate private property under the right of eminent domain, we accord fully with the judgment rendered and the general principle upon which it is founded.

If the use to which the property is to be put is a public use, the decision of the Legislature as to the necessity which re-

quires it to be taken is conclusive. *Talbot v. Hudson, supra*; *Miller v. Fitchburg*, 180 Mass. 32, 37. The question as to whether or not the use is a public one, however, must ultimately be decided by the court. *Miller v. Fitchburg, supra*, page 37, and cases cited. If the proposed bill benefits no one but the present or prospective owners of the land taken, or if the only benefit is in the profitable development and sale of the lands themselves, the purpose of the statute would not, in my opinion, be a public one. See Opinion of the Justices, 182 Mass. 605, 607; Opinion of the Justices, 155 Mass. 601. If, upon the other hand, the development and distribution for occupation of the lands affected gave relief to a considerable and thickly settled agricultural region, and affected beneficially the community as a whole throughout such region, as well as the individuals who acquired the land itself, it would doubtless be held by the court to be a public purpose which would justify the exercise of the power of eminent domain. As I have stated, the ultimate decision is for the court, but without definite knowledge as to the land which may be affected or the resulting benefits to the public as a whole, I am of opinion that I am not required to hold that the purpose of the act, as gathered from its provisions alone, would necessarily be unconstitutional.

The first question of the Honorable Senate, however, extends to and includes not only the general purpose of the act as stated in sections 1 and 2, but also matters of detail comprehended in other provisions, and I am therefore constrained to call attention to the provisions of section 5, that one-half of any sums received by the Commonwealth, upon disposing of such lands, in excess of the cost of the land plus the cost of reclamation, shall be awarded to the original owner or owners of any such land sold; and to say that in my opinion such provision is clearly unconstitutional. By section 2 it is provided that the State Board of Health, with the approval of the Governor and Council, may take by eminent domain any tract of wet land of two or more adjacent owners, at the assessed valuation thereof, and that any person aggrieved by a taking as aforesaid may have his damages assessed in the manner provided by law with respect to the taking of land for public parks, and that title to the land so taken shall pass to the Commonwealth. It is clear that upon such taking the title passes to the Commonwealth in fee, and the owner, having received compensation under the provisions of section 2, has no further right, title or

interest in the land taken, and a payment to him of half of the sum received in excess of the cost and expense of development cannot be considered to be an expenditure of public money for a public purpose, since the Commonwealth receives nothing in return therefor, but would be in the nature of a gratuity. With respect to the specific provision just considered, therefore, I am of opinion that the proposed act is unconstitutional.

In reply to the second question of the Honorable Senate I should say that, assuming that the purpose for which the land is taken and the money appropriated was a public purpose within the principles discussed in considering the first inquiry of the Honorable Senate, the expenditure of \$10,000 from the treasury of the Commonwealth and the exemption of the land from taxation, so long as the Commonwealth retains title, would be constitutional.

Replying to the third inquiry of the Honorable Senate in the precise terms of said inquiry, I am of opinion that it is *possible* that the provision of section 2, that the rule of damages shall be the assessed valuation, would be unconstitutional. In exercising the power of eminent domain the Legislature has no authority to designate an arbitrary amount which must be accepted by the person whose land is taken as damages for the taking, or to prescribe rules or principles upon which damages shall be computed. See *Monongahela Navigation Co. v. United States*, 148 U. S. 312; *In re Opinion of the Justices*, 66 N. H. 629; *Newburyport Water Co. v. Newburyport*, 85 Fed. Rep. 723. If the provision of section 2 that "said board of health . . . may take . . . any tract or tracts of wet lands . . . by eminent domain, at the assessed valuation of said lands," is to be regarded as an assessment of the damages occasioned by said taking, it might well be found objectionable upon constitutional grounds. The designation of a fixed sum to be paid as damages for the taking of land by eminent domain, even where an alternative is provided by an appeal to a jury, is, so far as I am aware, without precedent; but if the amount so fixed may be regarded as an offer of settlement which may or may not be accepted by the person whose land is taken, and whose constitutional rights to a just compensation for his property are protected by a further provision that "any person aggrieved by a taking as aforesaid may have his damages assessed in the manner provided by law in respect to the taking of land for

public parks," the constitutional requirement in the premises might be satisfied, since it is at least doubtful if any offer or award is required where provision is made for an ultimate determination of damages by a jury. See *Hamlin v. New Bedford*, 143 Mass. 192; *Bent v. Emery*, 173 Mass. 495; St. 1898, c. 278, § 4. And see *Attorney-General v. Old Colony Railroad*, 160 Mass. 62, 90.

Again, replying in the precise phraseology of the fourth inquiry of the Honorable Senate, it is, in my opinion, possible that section 6, and especially lines 5 and 6, would be unconstitutional. If the exploitation and operation of marl, peat or other deposits of commercial value would properly constitute an entrance by the Commonwealth "as a competitor into the field of industrial enterprise, with a view either to the profit that could be made through the income to be derived from the business, or to the indirect gain that might result to purchasers if prices were reduced by governmental competition," it would clearly be unconstitutional. Opinion of the Justices, 182 Mass. 605, 607. If, on the other hand, such exploitation and operation were merely temporary, undertaken in connection with the development of other adjacent or similar lands acquired for a public purpose, and were intended only for the purpose of reducing the cost of reclaiming the remainder of such land, such work might well be held to be a proper and incidental element of economy in the general work of reclamation.

I am, with great respect,

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

*Constitutional Law — Volunteer Militia — Adjutant General —
Term of Office.*

The provision of chapter II., section I., Article X. of the Constitution of the Commonwealth, that "the governor shall appoint the adjutant general," does not impose a limitation upon the authority of the General Court to fix and determine the tenure of office of the adjutant general, and a provision in a proposed act having for its purpose the revision of the organization of the volunteer militia, that "the term of office of the adjutant general shall be five years from the passage of this act," would not be unconstitutional.

MAY 20, 1912.

HON. GRAFTON D. CUSHING, *Speaker of the House of Representatives.*

SIR: — By an order adopted by the Honorable House of Representatives on May 1, 1912, I am requested to inform the House of Representatives whether in my opinion that provision of House Bill No. 2221, entitled "An Act to revise the organization of the Massachusetts Volunteer Militia," which provides that "the term of office of the adjutant general shall be five years from the passage of this act," is constitutional and legal.

The proposed act, which amends St. 1908, c. 604, § 12, by striking out the whole of said section and substituting a new section therefor, among other things provides that —

The military and administrative staff of the commander-in-chief shall consist of: —

The adjutant general, with the rank of brigadier general, who shall, *ex officio*, be chief of staff, such officers of the United States army or navy as may be detailed as assistant chiefs of staff, together with the chiefs of the inspector general's department, judge advocate general's department, quartermaster's department, subsistence department, pay department, medical department and ordnance department.

The terms of office of the chiefs of the above named departments shall be five years, as provided in chapter four hundred and forty-nine of the acts of the year nineteen hundred and eleven (and the term of office of the adjutant general shall be five years from the passage of this act and he shall be eligible for reappointment).

The existing provision upon the subject is to be found in St. 1908, c. 604, § 12: —

The staff of the commander-in-chief shall consist of: —

- 1 adjutant general, with the rank of brigadier general, who shall, *ex officio*, be chief of staff;
- 1 assistant adjutant general, with the rank of colonel;
- 4 aides-de-camp, each with the rank of major;
- 6 aides-de-camp, to be selected from the commissioned officers of the Massachusetts volunteer militia, but not to be relieved from duty with their organizations while serving in this capacity.

In time of war the commander-in-chief may appoint such additional staff officers as the service may require, with such rank, not higher than that of colonel, as he may designate. The above staff

officers, excepting the detailed aides-de-camp, shall be commissioned and hold office until their successors are appointed and qualified, but they may be removed at any time by the commander-in-chief.

The precise inquiry of the Honorable House of Representatives is, therefore, in substance, whether or not the General Court may provide a fixed and definite term of office for the adjutant general of the volunteer militia.

The pertinent provisions of the Constitution are contained in chapter II., section 1, dealing with the powers and prerogatives of the Governor. Article VII. constitutes the Governor the commander-in-chief of the army and navy, and of all military forces of the State, by sea and land, and vests in him full power, by himself, or by any commander, or other officer or officers, from time to time, to train, instruct, exercise and govern the militia and navy. Article X. provides —

The captains and subalterns of the militia shall be elected by the written votes of the train-band and alarm list of their respective companies, the field officers of regiments shall be elected by the written votes of the captains and subalterns of their respective regiments; the brigadiers shall be elected, in like manner, by the field officers of their respective brigades; and such officers, so elected, shall be commissioned by the governor, who shall determine their rank.

The legislature shall, by standing laws, direct the time and manner of convening the electors, and of collecting votes, and of certifying to the governor, the officers elected.

The major-generals shall be appointed by the senate and house of representatives, each having a negative upon the other; and be commissioned by the governor.

And if the electors of brigadiers, field officers, captains or subalterns, shall neglect or refuse to make such elections, after being duly notified, according to the laws for the time being, then the governor, with the advice of council, shall appoint suitable persons to fill such offices.

The commanding officers of regiments shall appoint their adjutants and quartermasters; the brigadiers their brigade-majors; and the major-generals their aids; and the governor shall appoint the adjutant-general.

The governor, with advice of council, shall appoint all officers of the continental army, whom by the confederation of the United States it is provided that this commonwealth shall appoint, as also all officers of forts and garrisons.

The divisions of the militia into brigades, regiments, and companies, made in pursuance of the militia laws now in force, shall be

considered as the proper divisions of the militia of this commonwealth, until the same shall be altered in pursuance of some future law.

I am advised that doubt has arisen as to the power of the Legislature to create a fixed term of office for the adjutant general, in view of the arrangement and language of the provisions of the Constitution above cited and of the distinction which seems to be made between officers of the militia who are commissioned to command and officers who are appointed adjutants, quartermasters, brigade-majors and aids to major-generals, with whom the adjutant general is included in Article X., and it is suggested that from the relation between an adjutant and his commanding officer, a brigade-major and his brigadier, an aid and his commanding general, and the adjutant general and the commander-in-chief, a constitutional right is to be inferred which is vested in the Governor, as commander-in-chief, and in a major-general, brigadier or regimental commander to appoint as adjutant general, aid, brigade-major, adjutant or quartermaster, such eligible person as he may desire, and that it would be in contravention of such constitutional right to provide a fixed term of office for any of these officers. The relations between a commanding officer and his personal staff are doubtless so intimate and of such a character as to render it desirable that such commanding officer should exercise his personal judgment in the selection of the members of his staff, and military custom appears to have recognized the propriety of such action by the commanding officer in requiring as matter of etiquette, upon a change of commanders, a voluntary tender of the resignations of members of the staff of his predecessor. This custom has been at times recognized in the statutes relating to the organization of the militia. (See R. S., c. 12, § 73.) It does not follow, however, that the existence of such a custom, or even a recognition of it in the Constitution in the apparent distinction between officers of the militia elected to command and officers appointed to positions upon the staff of a commanding officer, if such distinction amounts to recognition, must be given the force of a constitutional restriction upon the power of the General Court to deal with the term or tenure of staff appointments, or regarded as creating a modification, in the case of such appointments, of the well-recognized principle that where an office is established by the Constitution without

provision as to the term or duty thereof the latter may be altered, enlarged or modified in such manner as the Legislature may deem to be for the public interest. Opinion of the Justices, 117 Mass. 603; *Wales v. Belcher*, 3 Pick. 508; see *Taft v. Adams*, 3 Gray, 126; Const. of Mass., c. 1, § 1, Art. IV.

A careful consideration of the provisions of the Constitution which are material to this question discloses no intention upon the part of the framers thereof to impose a limitation upon the power of the General Court to fix and determine the tenure of office of the adjutant general. Upon the contrary, the Journal of the Convention for Massachusetts Bay, 1779-80, shows that in discussing the paragraph dealing with staff appointments, which was afterwards adopted, it was suggested that the words "during pleasure" be inserted, and that the suggestion was thereafter withdrawn and the paragraph accepted in its present form. The purpose of the suggestion, and the meaning of the words "during pleasure," may be illustrated by quoting from the constitution, submitted to the people by the General Court of 1777-78 and rejected by popular vote, a provision found in the 26th clause that "the Attorney-General, Sheriffs, Registers of the Courts of Probate, Coroners, Notaries Public, and Naval Officers, shall be appointed and hold their offices during pleasure." The convention, therefore, upon consideration and with intention, omitted from the clause of the Constitution which relates to the appointment of staff officers any express provision for the limitation which it is now argued must by implication be read into said clause.

The early statutes which deal with the organization of the volunteer militia contain no provision from which may be inferred a recognition that the tenure of office of either the adjutant general or any other staff officer was to be during the pleasure of his commanding officer (see St. 1809, c. 108); and it is significant that the earliest provision relative to the discharge or removal of staff officers (St. 1822, c. 92, § 16) was enacted after the adoption in 1821 of Article IV. of the Amendments to the Constitution, which, in part, provided that —

All officers commissioned to command in the militia may be removed from office in such manner as the legislature may, by law, prescribe —

and superseded a provision that —

No officer, duly commissioned to command in the militia, shall be removed from his office, but by address of both houses to the governor, or by fair trial in court-martial, pursuant to the laws of the commonwealth for the time being —

and at the time when the Legislature first assumed and exercised the authority to provide for the discharge of militia officers in a manner other than by fair trial in court-martial, or by address of both houses to the Governor. See St. 1821, c. 32, § 1; St. 1835, c. 144, §§ 2, 3; R. S., c. 12, §§ 67-73.

Moreover, there is nothing in the language of the constitutional provision itself which requires a construction inconsistent with an authority in the Legislature to determine the term of office of the adjutant general or of any other staff officer (see *Avery v. Inhabitants of Tyringham*, 3 Mass. 160), and in at least one instance such power has been exercised by the Legislature by providing, in Gen. Sts., c. 13, § 62, that "the adjutant general shall hold his office for the term of one year," subject to removal at any time by the commander-in-chief. And see St. 1912, c. 268; St. 1911, c. 449.

For the reasons above stated, therefore, I am of opinion that the provision of House Bill No. 2221, that the term of office of the adjutant general shall be five years from the passage thereof, would not be unconstitutional.

I am, with great respect,

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Constitutional Law — Governor — Veto — Duty to return Bill with Objections thereto in Writing to the Branch in which it originated — Return — Limit of Time.

Where certain bills, due under the provisions of Article II. of Section I. of Chapter I. of the Constitution of the Commonwealth to be returned on May 27 by the Governor, with his objections thereto in writing, to the House of Representatives, in which branch such bills originated, were found, on the morning of May 28, on the desk of the clerk of the House of Representatives, and the speaker of the House of Representatives, on a point of order, ruled that the vetoes were not properly returned until received by the clerk at 8 o'clock upon the morning of May 28, and such bills were transmitted by the clerk to the Secretary of the Commonwealth, with a statement of the above facts, it is not the duty of the Secretary to determine whether or not such bills were seasonably

returned, and he should receive and record them among the laws of the current year, leaving the question of their validity to be determined by the proper tribunal.

It would seem, however, that the duty devolving upon the Governor under the provisions of Article II. of Section I. of Chapter I. of the Constitution, if he has objection, to return a bill or resolve within the prescribed period of time to the branch of the Legislature in which it originated, should be performed with sufficient formality to insure that the return shall be made to some proper officer of the Senate or House of Representatives, as the case may be, if the branch to which the bill or resolve and the objections are sent is not in session.

JUNE 7, 1912.

HON. ALBERT P. LANGTRY, *Secretary of the Commonwealth.*

DEAR SIR:— You desire my opinion as to whether or not it is your duty to receive certain bills transmitted to you by the clerk of the House of Representatives under circumstances which appear from a communication accompanying said bills to be as follows:—

These acts and resolve were found on the desk of the clerk of the House of Representatives on the morning of Tuesday, May 28, last. They were due to be returned by His Excellency the Governor to the House of Representatives, in which branch they originated, with his objections thereto in writing, on Monday, May 27.

At the session of the House on Tuesday, May 28, the speaker called the attention of the House to the fact that these bills and resolve had been found on the desk of the clerk of the House that morning.

A point of order was raised that the bills and resolve and veto messages were not properly before the House of Representatives, not having been returned by the Governor within the five days allowed under Article II. of Section I. of Chapter I. of the Constitution.

On this point of order the speaker ruled as follows: "the vetoes were without question returned after the clerk's office was closed on the last day during which, under Article II. of Section I. of Chapter I. of the Constitution, three of the vetoes should apparently have been returned. There is no official record whether the vetoes were left in the clerk's office before or after midnight. The chair, therefore rules that simply leaving the papers in the clerk's office after it is closed is not such a return to the House of Representatives of the bills and resolves, with his objections thereto in writing, as is required by the Constitution, as the House can take cognizance of; and that three of the vetoes were not properly returned until received by the clerk at 8 o'clock this morning."

It is the duty of the Secretary of the Commonwealth, under the provisions of R. L., c. 9, § 1 —

at the close of each session of the general court, [to] collate and cause to be printed in one volume, in style and arrangement as heretofore, the constitution of the commonwealth, the acts and resolves passed, any amendments to the constitution agreed to during such session, the governor's address and messages, a list of the changes of names returned during the preceding year by the probate courts, a list of the officers of the civil government of the commonwealth, a table of changes in the general laws, and an index.

I assume, therefore, that your inquiry, in substance, requires my opinion as to whether or not you shall receive for record, and include in the collated and printed volume of the acts and resolves for the current year, the two bills and the resolve transmitted to you in the manner hereinbefore described.

The ruling of the speaker, already quoted, appears to be based upon the fact that there was before him "no official record whether the vetoes were left in the clerk's office before or after midnight;" but the absence of such record is not, in my opinion, conclusive, for if the placing of the bills and the resolve upon the desk of the clerk of the House of Representatives during the absence of the clerk and after his office was closed for business is a sufficient compliance with the constitutional provision that the Executive shall return such bills and resolve, together with his objections thereto in writing, to the branch of the Legislature in which they originated, the hour or moment when they were placed there may be established by competent proof. *Gardner v. The Collector*, 6 Wall. (U. S.) 499, 511. And see *United States v. Allen*, 36 Fed. Rep. 174; *Lyons v. Woods*, 153 U. S. 649, 663.

Since the fact, if it be a fact, may be established by proper evidence, I shall assume for the purposes of your inquiry that the several bills and resolve were placed upon the desk of the clerk of the House of Representatives before midnight on Monday, May 27, and within the period allowed therefor by the Constitution. The present status of the bills and the resolve in question, therefore, must depend upon whether or not they have been duly "returned" to the House of Representatives.

The provision of the Constitution which is material in the premises is Article II. of Section I. of Chapter I. of Part the Second of the Constitution, which I quote: —

No bill or resolve of the senate or house of representatives shall become a law, and have force as such until it shall have been laid before the governor for his revisal; and if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the senate or house of representatives, in whichsoever the same shall have originated; who shall enter the objections sent down by the governor, at large, on their records, and proceed to reconsider the said bill or resolve. But if after such reconsideration, two-thirds of the said senate or house of representatives, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall have the force of a law; but in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for, or against, the said bill or resolve, shall be entered upon the public records of the commonwealth.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor within five days after it shall have been presented, the same shall have the force of a law.

It has been held that a bill can be laid before the Governor only by being presented to him personally. So in Opinion of the Justices, 99 Mass. 636, in reply to an inquiry of the House of Representatives as to whether a bill transmitted by the Senate to the Secretary of the Commonwealth during a temporary absence of the Governor from the Commonwealth was properly "laid before" the Governor prior to his return, the court said:—

As the duty of revisal by the Governor is a personal duty, with which he alone is intrusted when his chair is not vacant, it is necessary that the bill should be laid before him personally. A bill is not laid before him or presented to him, within the meaning and intent of these provisions, by being sent from the Senate to the Secretary of the Commonwealth. The Constitution makes the Secretary an independent officer, and prescribes his duties; and his possession of a bill sent by the Senate to be presented to the Governor is not the possession of the Governor.

A bill must be laid before the Governor, or the person who, for the time being, is clothed with the powers of Governor under the Constitution, for his revision. The individual whose duty it is to sign the bill is entitled to have it before him, that he may have the opportunity to sign it or return it with his objections thereto to the branch of the

Legislature in which it originated. This bill does not appear to have been so presented to any one, except by the statement that it was returned unsigned on the 19th, with the Governor's objections.

This opinion is cited with approval in *Farwell v. Boston*, 192 Mass. 15, 19. In the latter case the then charter of the city of Boston (St. 1854, c. 448, § 47) required an ordinance, order, resolution or vote to be presented to the mayor, and provided that if such ordinance, order, resolution or vote "shall not be returned by the mayor within ten days after it shall have been presented the same shall be in force;" and it was held that leaving a vote with a clerk in the mayor's office, in the absence of the mayor, was not a presentation to that officer within the meaning of the provision above quoted.

Beyond holding, in Opinion of the Justices, 135 Mass. 594, that the Governor is not required to deliver a bill or resolve in person, the courts of this Commonwealth do not appear to have defined what constitutes returning a bill or resolve to the branch of the Legislature in which it originated. In that opinion it is said that the delivery by the Governor "of the message to the private secretary, who is an officer provided for by statute, and the proper organ of communication with the Legislature, with directions to have it sent down, was the first step in its transmission to the House." In the case of *Harpending v. Haight*, 39 Cal. 189, however, the meaning of the word in a provision of the constitution of California that "if any bill shall not be returned within ten days after it shall have been presented to him (the governor) . . . the same shall be a law, in like manner as if he had signed it, unless the Legislature, by adjournment, prevent such return," was discussed at great length. It there appeared that on the last day of the prescribed period the Governor, by his messenger, sent to the Senate a bill which he had declined to sign, with his objections thereto in writing. Upon arriving at the Senate chamber, however, the messenger discovered that the Senate had adjourned until the following morning, and immediately returned both the bill and the message to the Governor without attempting to deliver them to the Senate or to deposit them with any officer of the Senate or with any other person for its use, and they were thereafter retained by the Governor. After referring to the constitutional requirement that a bill must, before becoming a law, be "presented to the Governor," the court says, at page 199:—

And so, upon the other hand, when we come to consider the corresponding duty of the Executive to “return” the bill to the Senate in this case, we know by attending to the results to be brought about by such “return” that it must be a step taken by which his own time for deliberation is ended and that for the deliberation of the Senate is begun; that the bill itself must be put beyond the Executive possession; that it must be placed into the possession, actual or potential, of the Senate itself; and that, as part of this return, the Executive objections to the passage of the bill must be stated.

And again, at page 203:—

It was the duty of the messenger to communicate to the Senate the message which he bore from the Executive on that occasion. This was to be done in the most direct manner that circumstances would permit. It was impossible for him to immediately announce it to the Senate, for that body was not in session. It had a right to be in recess, if it desired so to be, and it was not in the power of the Executive or his messenger to recall it to its sittings. But its right to be in recess was no greater or higher than was the right of the Executive to return the bill in question for its reconsideration; nor is there any reason why the free exercise of these admitted rights upon the part of the Senate and Governor, respectively, should bring them into collision. The Senate has the unqualified, constitutional power to adjourn for three consecutive days. (Art. IV., Sec. 15, Constitution.) It must often happen that these three days will include the last day allowed the Executive for the exercise of the veto power against the passage of a particular Senate bill.

Now, if the mere fact of the recess of the Senate, thus constitutionally taken, does operate to defeat, in a measure, the exercise of the veto power conferred on the Executive by the Constitution, then we have the strange spectacle of an irreconcilable conflict between the several clauses of that instrument itself, by which the Senate, by the mere exercise of its own admitted constitutional authority to adjourn, violates the equally clear constitutional right of the Executive to have it kept in session.

We are of opinion that the adjournment of the Senate on March 31 did not curtail the veto power of the Executive over the bill in question, nor should it even have embarrassed him in its exercise. The return should have been made in such manner as the circumstances would permit; it should, at all events, have left the bill and message beyond the Executive control, and, if need be, in the immediate custody of some proper person who would be likely to deliver it to the Senate at the first opportunity. The best return that the circumstances would admit, would, in our judgment, be a proper return. The maxim *lex non cogit ad impossibilia* would be applicable

to such a condition of affairs. We know of no other rule, either, upon which the clear right of the Governor to make the return to the Senate can be reconciled with the equally clear right of the Senate to be in recess at the time.

If the requirement of the Constitution that, before becoming a law a bill or resolve must be laid before the Governor for his revisal, can be met only by laying such bill or resolve before him personally, it would seem that the corresponding duty devolving upon the Governor, if he has objection, to return such bill or resolve within five days to the branch of the Legislature in which it originated, should be performed with sufficient formality to insure that the return shall be made to some proper officer of the Senate or House of Representatives, as the case may be, if the body to which the bill or resolve and the objections are sent down is not in session. See Opinion of the Justices, 45 N. H. 607, 610. Or at least to "the immediate custody of some proper person who would be likely to deliver it . . . at the first opportunity." See *Harpending v. Haight*, *supra*, p. 204.

In the case here under consideration, if a decision upon this point were required by the inquiry submitted to me, I should be inclined to accept the principles laid down in the cases cited, and to hold that upon the facts before me the bills and the resolve transmitted to you by the clerk of the House of Representatives were not returned to that body before midnight on May 27, and therefore were not returned within the five days allowed therefor by the Constitution.

I am of opinion, however, that I am not required to pass upon this question. The bills and the resolve to which your inquiry is directed were transmitted to you by the clerk of the House of Representatives, and are in your possession and custody as the recording officer of the Commonwealth and the custodian of its records; and you are officially advised that the House of Representatives, in which they originated and to which they should have been returned by the Executive, has declined to receive them, upon the ground that they were not seasonably returned to it. Under these circumstances it is not the duty of the Secretary to determine whether or not the bills and the resolve in question were in fact returned, or whether or not the action of the House was warranted in the premises. He should be guided by the official record of the facts, and receive and

record the several bills and the resolve among the laws of the current year, leaving the question of their validity to be determined by the proper tribunal.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

*County Treasurers — Payments — Approval of Bill or Order —
Duty to ascertain Legality of Expenditures.*

Under the provisions of R. L., c. 21, § 8, that "each county treasurer shall collect, receive and safely keep all money belonging to the county, and pay out the same in accordance with law," it is the duty of a county treasurer to ascertain whether or not a payment which he is called upon to make, by an order or bill duly approved by the county commissioners, may be made by him according to law, and he is therefore required to satisfy himself that the expense for which payment is to be made was legally incurred in the first instance.

JUNE 12, 1912.

Hon. FRANK L. DEAN, *Controller of County Accounts*.

DEAR SIR:— In a letter dated May 13 you state that certain payments by county treasurers, which are "irregular by reason of there being no legal authority for their payment," have come to your attention, and that with reference to such payments "the claim made by certain treasurers is that their only liability is under chapter 21, sections 12 and 17 of the Revised Laws, and that whatever bill comes to them, approved by the commissioners, is for them to pay, unquestioned," and you desire my opinion "as to whether the treasurer is responsible for all improper payments made by him, or, if his responsibility is limited by law, just what that limitation is."

The duty of a county treasurer as defined by R. L., c. 21, § 8, is as follows:—

Each county treasurer shall collect, receive and safely keep all money belonging to the county, and pay out the same in accordance with law; but he shall not pay money to the county commissioners or associate commissioners to be disbursed by them in behalf of the county.

Section 9 provides that —

No payments, except of expenses in criminal prosecutions, of expenses of the courts, of the compensation or salaries of county officers

established by law, of outstanding notes or bonds and of interest thereon, shall be made by a treasurer except upon orders drawn and signed by a majority of the county commissioners, certified by their clerk and accompanied, except in the county of Suffolk, by the original bills, vouchers or evidences of county indebtedness for which payment is ordered, stating in detail the items and confirming such bill or account. Said clerk shall not certify such orders until he has recorded them in the records of the county commissioners.

Section 12 provides in part that —

The county treasurer may, before payment of an account rendered against the county by a county officer, in writing require of him a written statement of the specific provision of law authorizing it. Said statement shall be filed with the vouchers. The treasurer shall be personally liable for money paid out by him, except payments specifically required by law, unless there is an unexpended balance of an appropriation made for the purpose sufficient for such payment, and he shall be personally liable for any money paid by him without the voucher and certificate required by law, except as provided in section thirty-four.

The county treasurer is chiefly a disbursing officer. Most of the payments made by him are made upon orders issued by the county commissioners or upon bills audited or allowed by said commissioners or other public officers. See St. 1907, c. 170; R. L., c. 158, § 8; R. L., c. 157, §§ 16, 17. In so far as the expenses for the payment of which such orders are issued or bills approved are incurred for purposes for which expense may legally be incurred, I am of opinion that the county treasurer may exercise no discretion, and may make payment without incurring responsibility in the premises. Upon the other hand, it is clearly the duty of the county treasurer to ascertain whether or not a payment which he is called upon to make by an order or by a bill duly approved may be made by him according to law, and this necessarily requires him to satisfy himself that the expense for which the payment is to be made was legally incurred in the first instance, and for this purpose he may require a written statement of the specific provision of law by which any such expense was authorized. See R. L., c. 21, § 12. If, upon the face of the record presented by the voucher or certificate, it clearly appears that there is no legal warrant for the expendi-

tures, no order of the county commissioners or no approval by them or by any public officer of charges so incurred is sufficient to warrant the payment.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Veteran — Commissioned Officer — Gratuity — Attorney — Fee.

St. 1912, c. 702, which in section 1 provides for a gratuity of \$125 "for those veteran soldiers and sailors who volunteered their services in the civil war," and in section 2 provides that such gratuity "shall be paid to every person or his legal representatives . . . who served in the army or navy of the United States to the credit of the commonwealth during the civil war, . . ." includes commissioned officers as well as enlisted men.

The Commission on Gratuities, established by section 3 of St. 1912, c. 702, is not required to make or to secure payment of the fee prescribed by section 6 to any attorney or other person entitled thereto for the prosecution of a claim for a gratuity under such statute.

JULY 8, 1912.

Hon. JOHN E. WHITE, *Chairman, Commission on Gratuities.*

DEAR SIR:— By a communication dated July 2, 1912, you request my opinion upon two questions: first, whether St. 1912, c. 702, entitled "An Act to provide for suitably rewarding certain veteran soldiers and sailors" should be construed to include officers; and second, whether, under the provisions of section 6, it is the duty of the commission to pay the fee therein provided for.

The act above cited provides, in section 1, that —

For the purpose of promoting the spirit of loyalty and patriotism, and in recognition of the sacrifice made both for the commonwealth and for the United States by those veteran soldiers and sailors who volunteered their services in the civil war, and for the purpose of promoting the public welfare, by giving visible evidence to this generation and future generations that, if danger should again threaten the nation and the call should again come for men, Massachusetts will not forget the great service of those who volunteer, a gratuity of one hundred and twenty-five dollars to each veteran is hereby authorized to be paid from the treasury of the commonwealth under the conditions hereinafter set forth.

Section 2 is as follows:—

The gratuity herein provided for shall be paid to every person, or his legal representatives, not being a conscript or a substitute, and not having received a bounty from the commonwealth or from any city or town therein, who served in the army or navy of the United States to the credit of the commonwealth during the civil war, and was honorably discharged from such service, and is living at the time of the passage of this act; it being intended and provided that the said gift shall not be a bounty, nor a payment in equalization of bounties, nor a payment for services rendered, nor a payment for the purpose of making the result of their contracts of enlistment more favorable to them because the contracts of other soldiers were on better terms, but a testimonial for meritorious service such as the commonwealth may rightly give, and such as her sons may honorably accept and receive.

The latter section in terms provides that the gratuity "shall be paid to every person . . . not being a conscript or a substitute, and not having received a bounty from the commonwealth or from any city or town therein, who served in the army or navy of the United States to the credit of the commonwealth during the civil war, and was honorably discharged from such service, and is living at the time of the passage of this act." If, therefore, an officer can satisfy the commission that, not being a conscript or a substitute, he has served in the army or navy of the United States to the credit of the Commonwealth during the civil war, and has been honorably discharged from service, I am of opinion that he would be entitled to receive the gratuity, notwithstanding that bounties were in the first instance payable only to enlisted men. See St. 1864, cc. 48, 143, 211. The present statute does not contemplate that the payment of a gratuity under its terms shall be in lieu of bounty.

With respect to your second question, I am of opinion that the commission is not required to make payments to an attorney or other person entitled thereto for the prosecution of a claim under the statute. Section 6, to which your communication refers, is as follows:—

The fee for the prosecution of a claim under this act shall not exceed the sum of five dollars; and the fee agreed upon between the parties, not exceeding the said amount, shall be paid to the attorney or other person entitled thereto out of the amount allowed on the certificate of the commission allowing the same. Any attorney or

other person who demands or receives for his services any greater compensation than the sum above specified shall be guilty of a misdemeanor, and shall for every such offence be punished by a fine not exceeding one hundred dollars or by imprisonment at hard labor for a term not exceeding six months, or by both such fine and imprisonment.

There is nothing in this section to impose upon the commission the duty to secure payment of the fee named therein to the attorney or other person who may be entitled to it.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

*License — Keeper of Hospital for Insane or Feeble-minded —
Suitable Person — Partnership.*

Under the provisions of St. 1909, c. 504, § 24, that "the governor and council may, upon the recommendation of the state board of insanity, license any suitable person to establish and keep a hospital or private house for the care and treatment of the insane, epileptic, feeble-minded, and persons addicted to the intemperate use of narcotics or stimulants" a license may not be granted to a partnership as such.

AUG. 12, 1912.

CHARLES E. THOMPSON. M.D., *Executive Officer, State Board of
Insanity.*

DEAR SIR: — In behalf of the State Board of Insanity you have requested my opinion upon the following question: —

Whether under section 24, chapter 504, Acts of 1909, the State Board of Insanity is limited in its recommendations to individuals or whether it can recommend that licenses be granted to partnerships.

The section of the statute referred to provides as follows: —

The governor and council may, upon the recommendation of the state board of insanity, license any suitable person to establish and keep a hospital or private house for the care and treatment of the insane, epileptic, feeble-minded, and persons addicted to the intemperate use of narcotics or stimulants, and may at any time revoke such license. No such recommendation shall be made unless the said board is satisfied that the person applying therefor is a duly qualified physician, as provided in section thirty-two, and has had practical experience in the care and treatment of such patients. Any person

owning or maintaining such a hospital or private house on the date of the passage of this act shall be entitled to maintain the same under the provisions of law in force at that time, except that every such hospital or house shall be subject to the visitation and supervision of the state board of insanity.

The word "person," as used in different statutes, varies much in the comprehensiveness of its scope, and its meaning in any particular statute must usually be determined by the context and by consideration of the object of the statute in which it is used. It has sometimes been construed as including a corporation, an artificial person, and as used in some statutes it has undoubtedly been sometimes held to include a copartnership.

Considering the word as it is used in the statute in question with reference to its context and with reference to the purpose of the statute, the term "suitable person" and the term "the person applying therefor" in my opinion are to be considered as referring to one and the same person, and since the Board, in order to make its recommendation to the Governor and Council, must state that the applicant for a license in addition to being otherwise "suitable" is "a duly qualified physician, as provided in section thirty-two," it becomes clear that the word "person" was not intended to include a partnership as such, since a partnership cannot be "a duly qualified physician."

Considering the meaning of the word with reference to the clear purpose of the statute leads to the same conclusion. The provisions of law requiring the license as a prerequisite to the right to establish or keep such a hospital as is described in the act were obviously to keep the control and management of such hospitals under only such physicians as were deemed by the Board to be suitable and duly qualified to conduct them.

If the word "person" were to be construed to include a partnership, and if the words "person applying therefor" were to be construed as requiring simply that the one member of the partnership who made the application should be a duly qualified physician, the result would be not only that the application in the name of the physician would not in fact be the application of the partnership, but also the very object of the law might be defeated because the physician might be the only physician among the partners, or might be merely a nominal or silent partner, or one of several partners having only an insignificant part of the management of the hospital. In a previous opinion to the Board I have advised that the only person entitled to be

licensed under the statute referred to was the responsible head of such hospital or private house, that is, "the one who exercises control or proprietorship of it." Opinion of Attorney-General, Report for 1911, p. 15; *Commonwealth v. Kimball*, 105 Mass. 465, 467.

The opinion above expressed is, however, not to be construed as holding that duly licensed individuals may not lawfully form a partnership for the purpose of establishing or keeping such a hospital. In other words, while your Board is, in my opinion, not authorized to recommend for license a partnership, but must limit its recommendations to individuals, the law does not appear to forbid the formation of a partnership by individuals, each of whom is a duly qualified physician, and each of whom has been deemed suitable to establish and keep such a hospital by your Board, and each of whom has been duly licensed as an individual for such work.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Town — Indebtedness for Water Supply — Vote.

A town which has accepted by a two-thirds vote an act authorizing it to supply itself and inhabitants with water, may incur indebtedness therefor only by compliance with the provision of R. L., c. 27, § 8, which requires a vote of two-thirds of the voters present and voting at a town meeting to authorize incurring indebtedness for such purpose.

AUG. 15, 1912.

Mr. WILLIAM G. GRUNDY, *Deputy Director, Bureau of Statistics*.

DEAR SIR:— You have requested my opinion as to "whether a town which accepts by a two-thirds vote an act authorizing it to supply itself and inhabitants with water may incur debt therefor without being required to comply with the provisions of R. L., c. 27, § 8, which makes necessary a two-thirds vote in order that it may incur debt for such a purpose," and you have informed me orally that your inquiry is made with a special reference to the town of Merrimac, which, by St. 1903, c. 281, was authorized to supply itself and its inhabitants with water.

Section 6 of that act is as follows:—

Said town may, for the purpose of paying the necessary expenses and liabilities incurred under the provisions of this act, issue from

time to time bonds, notes or scrip to an amount not exceeding ninety thousand dollars. Such bonds, notes or scrip shall bear on their face the words, Town of Merrimac Water Loan, and shall be payable at the expiration of periods not exceeding thirty years from the date of issue, shall bear interest, payable semi-annually, at a rate not exceeding four per cent per annum, and shall be signed by the treasurer of the town and countersigned by the water commissioners hereinafter provided for. Said town may sell such securities at public or private sale, or pledge the same for money borrowed for the purpose of this act, and upon such terms and conditions as it may deem proper: *provided*, that such securities shall not be sold for less than the par value thereof.

Section 14 is as follows: —

This act shall take full effect upon its acceptance by two thirds of the legal voters of the town of Merrimac present and voting thereon at a legal meeting called for the purpose within three years from its passage; but the number of meetings so called in any one year shall not exceed three; and for the purpose of being submitted to the voters as aforesaid this act shall take effect upon its passage.

Your question would seem to be answered by the application of the principles stated in an opinion rendered to your department July 7, 1911, in reply to a closely similar question.

The vote of the town to accept St. 1905, c. 281, is not to be construed as a vote to issue bonds, notes or scrip. It is merely an acceptance of the legal authority to issue bonds, notes or scrip for the purposes of the act at such later time or times as it shall in accordance with law vote to exercise that authority. In the exercise of that authority the town must follow the statutory requirements. So far as St. 1903, c. 281, prescribes the details of such issue it is to be followed; in other respects the general law must control. The special act does not state whether the vote to issue bonds, notes or scrip shall be a majority or a two-thirds vote. The matter is, therefore, governed by the provisions of R. L., c. 27, § 8, which requires, that debts shall be incurred only in the case of a town, by "a vote of two thirds of the voters present and voting at a town meeting," and in the case of a city, by a vote "of two thirds of all the members of each branch of the city council."

It is provided by R. L., c. 27, § 21, that where a city accepts, by a vote of two-thirds of the legal voters, an act to supply it

with water a "vote of the majority of the members of each branch of the city council" shall be sufficient to authorize the issue of bonds. By implication, it appears from this provision of law that a vote merely to accept the act is not sufficient to authorize the issue of bonds, and that the issue of bonds must be authorized by a subsequent vote of the city or town. It also appears by implication from this provision of the statutes that in cases not within this exception a two-thirds vote is necessary to authorize such an issue of bonds. There is no provision of law authorizing a town which has accepted such an act to issue bonds on a vote of less than two-thirds of the voters present and voting at a town meeting.

Your question is, therefore, to be answered in the negative.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Hours of Labor — Cities and Towns — Acceptance of Statute.

St. 1911, c. 494, providing in section 1 that "the service of all laborers, workmen and mechanics, now or hereafter employed . . . by any city or town which has accepted the provisions of section twenty of chapter one hundred and six of the Revised Laws, or of section forty-two of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine, . . . is hereby restricted to eight hours in any one calendar day," is not in force in cities and towns which have not accepted the provisions of R. L., c. 106, § 20, or of St. 1909, c. 514, § 42, but which had accepted the provisions of St. 1899, c. 344, a corresponding provision of an earlier law.

AUG. 15, 1912.

Gen. J. H. WHITNEY, *Chief of the District Police*.

DEAR SIR:— You have requested my opinion as to whether chapter 494 of the Acts of 1911 is applicable to and in force in cities and towns which have not accepted the provisions of section 20 of chapter 106 of the Revised Laws or of section 42 of chapter 514 of the Acts of 1909, but which had accepted the provisions of chapter 344 of the Acts of 1899, a corresponding provision of an earlier law.

Section 1 of said chapter 494 of the Acts of 1911 is in part as follows:—

The service of all laborers, workmen and mechanics, now or hereafter employed by the commonwealth or by any county therein or

by any city or town which has accepted the provisions of section twenty of chapter one hundred and six of the Revised Laws, or of section forty-two of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine, or by any contractor or subcontractor for or upon any public works of the commonwealth or of any county therein or of any such city or town, is hereby restricted to eight hours in any one calendar day, . . .

In my opinion this inquiry must be answered in the negative. In section 20 of chapter 106 of the Revised Laws it is provided that such laws should be applicable to cities and towns which had accepted the provisions of that section, "or the corresponding provisions of earlier laws." Chapter 514 of the Acts of 1909, which prohibited requesting or requiring, etc., any employee to work more than eight hours in any one day, omitted the foregoing phrase which had been contained in said section 20 of chapter 106 of the Revised Laws, providing only that it should apply to cities which had accepted the provisions of section 20 of chapter 106 of the Revised Laws and section 42 of said chapter 514 of the Acts of 1909. In chapter 494 of the Acts of 1911, in which the word "permit" was added to the previous provisions of the act of 1909, it is also provided that the act shall apply to cities and towns which had accepted the provisions of said section 20 of chapter 106 of the Revised Laws or of section 42 of chapter 514 of the Acts of 1909. It appears clear, therefore, that in order to have chapter 494 of the Acts of 1911 in force in any city or town, it must appear that such city or town has accepted either the provisions of section 20 of chapter 106 of the Revised Laws or section 42 of chapter 514 of the Acts of 1909.

The earlier provisions of law were less stringent than the more recent legislation hereinbefore cited, and it appears to me to have been the intent of the Legislature, when they made the law more drastic and added the recent provisions to the general law making eight hours a legal day's work, to require cities and towns to accept the provisions of these more recent enactments. As this is a penal statute, and so must be strictly construed, I am of opinion that the act in question is not in force in such cities and towns as are covered by your inquiry.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Workmen's Compensation Act — Employee — Commonwealth as Employer.

The provisions of St. 1911, c. 751, which establishes a system for the compensation of employees for personal injuries received in the course of their employment, are not applicable to the Commonwealth as an employer in its various departments nor to direct employees of the Commonwealth.

AUG. 19, 1912.

DAVID SNEDDEN, Esq., *Commissioner, State Board of Education.*

DEAR SIR: — You have requested my opinion as to whether, under the provisions of St. 1911, c. 751, known as “the workmen’s compensation act,” the Massachusetts Board of Education is required to insure teachers, janitors, engineers, working students and others employed to do work about the grounds and shops of certain educational institutions within the jurisdiction of the Board, such, for example, as the normal schools. The Massachusetts Agricultural College, to which you refer in your letter, is not strictly a State institution, and I will, therefore, confine myself to answering the question with reference to those institutions in which the persons referred to are employed directly by the Commonwealth.

While in the words of the Supreme Judicial Court of the Commonwealth, “the act in question involves a radical departure in the manner of dealing with actions or claims for damages for personal injuries received by employees in the course of their employment from that which has heretofore prevailed in this Commonwealth” (209 Mass. 607), it is not, in my opinion, to be considered as involving a radical change in the law as to what shall constitute claims or causes of action against the Commonwealth or in the law prescribing the manner of the prosecution of such claims.

The Commonwealth, since it is sovereign, may be impleaded in its own courts only by its clearly expressed consent, and claims against the Commonwealth may be prosecuted only in the manner and upon the terms assented to by the Commonwealth by clear legislative enactment.

The statute in question is not by express provision made applicable to the Commonwealth, and its provisions as to the administration of the law are not consistent with an intention by the legislative body that the act should apply to the Com-

monwealth as the employer in its various departments, or to persons directly employed by the Commonwealth in those departments.

In my opinion, therefore, the statute in question is not to be considered as applicable to the Commonwealth or to those directly employed by the Commonwealth within the field of the jurisdiction of the State Board of Education.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

*License to operate Automobile — Revocation — Conviction —
Judgment of Guilty placed on File.*

The Massachusetts Highway Commission, under the provisions of St. 1909, c. 534, § 22, that "a conviction of a violation of this section shall be reported forthwith by the court or trial justice to the commission, which shall revoke immediately the license of the person so convicted," is warranted in treating a judgment of guilty placed on file by the trial court as a conviction.

SEPT. 17, 1912.

HON. WILLIAM D. SOHIER, *Chairman, Massachusetts Highway Commission*.

DEAR SIR:—Your inquiry of August 27 in substance requires my opinion upon the question whether or not a judgment of guilty placed on file by the court constitutes a conviction within the meaning of St. 1909, c. 534, § 22.

The section cited establishes, among other offences, that of operating an automobile or motor cycle recklessly or so that the lives and safety of the public may be endangered, and your communication states that the judgment or finding of guilty was upon facts tending to prove this offence. The section then proceeds as follows:—

A conviction of a violation of this section shall be reported forthwith by the court or trial justice to the commission, which shall revoke immediately the license of the person so convicted. If it appears by the records of the commission that the person so convicted is the owner of a motor vehicle, or has exclusive control of any motor vehicles as a manufacturer or dealer, the commission may revoke the certificate of registration of all motor vehicles so exclusively owned or controlled. Whenever any person so convicted appeals, the commission shall suspend forthwith the license of the person so convicted, and shall order the license delivered to it, and shall not

reissue said license unless such person is acquitted in the appellate court, or unless the commission in its discretion, after an investigation or upon a hearing, decides to reissue it. No new license or certificate shall be issued by the commission to any person convicted of a violation of this section until after sixty days from the date of such final conviction, nor thereafter except in the discretion of the commission.

The question is not free from difficulty. In *Munkley v. Hoyt*, 179 Mass. 108, where it was provided in St. 1896, c. 397, § 9, that the Board of Registration in Pharmacy, after hearing, might suspend the registration and certificate of a registered pharmacist, or might revoke such registration and certificate altogether, but which contained the proviso that "the license or certificate of registration of a registered pharmacist shall not be suspended or revoked for a cause punishable by law until after conviction by a court of competent jurisdiction," the court held that the placing of the case on file after a plea of guilty was a sufficient conviction to warrant the suspension or revocation of the license. The court said, at page 111:—

It is the intention of the statute to give a pharmacist charged with a crime the right to a trial in the court having jurisdiction of his offence, but if his guilt be there established so that the court may impose sentence according to its powers, then it is sufficiently established for the Board of Pharmacy to act upon their finding, and to impose the penalty according to their powers.

And again, at page 112:—

The problems before the respective tribunals are entirely different, and, the guilt of the accused being established through conviction by plea or verdict in the one and by the finding after a hearing in the other, the accused is subject to such punishment as the respective tribunals may lawfully impose, and the right of either to proceed to judgment is not affected by the fact that the other sees fit to decline to proceed to judgment.

And it appears to be well settled that in its ordinary legal sense the word "conviction," as used in the statutes of the Commonwealth, signifies that the defendant has pleaded guilty or has been found guilty by the verdict of a jury or the finding of a court. I. Op. Atty.-Gen., 499; *Commonwealth v. Lockwood*, 109 Mass. 323. In some cases, however, the word is employed

in statutes to designate the judgment and sentence of the court upon a verdict, finding or confession of guilt. Thus, in *Commonwealth v. Kiley*, 150 Mass. 325, under the provision of St. 1888, c. 392, that "the conviction by a court of competent jurisdiction of a person licensed under the provisions of chapter one hundred of the Public Statutes, for violation of any of the provisions of said chapter, and the several acts in amendment thereof, shall of itself make the license of said person void," the court held that a verdict of guilty found by a jury in the Superior Court, from which an appeal was taken, was not a conviction within the meaning of the statute above cited, and the court said:—

Under this provision, the effect of a conviction of the kind named is to deprive the defendant of a valuable right, without an opportunity for further trial or investigation. We are of opinion that nothing less than a final judgment, conclusively establishing the guilt, will satisfy the meaning of the word "conviction" as here used. At any time before a final judgment of the court a motion in arrest of judgment may be made, or the verdict may be set aside upon a motion for a new trial, on the ground of newly discovered evidence, or for other good cause; and, upon further proceedings, it may turn out that the defendant is not guilty.

And see *Commonwealth v. Gorham*, 99 Mass. 420; *Fay v. Harlan*, 128 Mass. 244.

The distinction between the case of *Munkley v. Hoyt* and the case of *Commonwealth v. Kiley*, and other similar decisions, appears to rest upon the fact that in the latter the conviction itself voids or revokes the license so that the loss of the license in effect becomes a part of the sentence rather than a consequence of the verdict or finding of guilty, whereas in the former case the determination of the guilt of the licensee did no more than confer jurisdiction upon an independent tribunal to proceed with a separate inquiry resulting in the revocation or suspension of the license.

The case presented by the inquiry of the commission appears to lie somewhere between the above decisions. Under the provisions of section 22, above quoted, which are mandatory, the commission is not vested with any discretion in the premises, and their function in connection with the revocation of the license is purely ministerial, so that at least to the extent of making the revocation of the license a necessary consequence of

the conviction of the licensee, the statute resembles that considered by the court in *Commonwealth v. Kiley*. Upon the other hand, the provision of section 22 that "whenever any person so convicted appeals, the commission shall suspend forthwith the license of the person so convicted," appears to contemplate action upon the part of the commission before the final judgment which constitutes a conviction as defined in *Commonwealth v. Kiley*. The purpose of the section is undoubtedly to protect the public against the reckless operation of automobiles or motor cycles.

Taking into consideration that the purpose of section 22 is to secure the safety of the public upon highways where automobiles and other motor vehicles may be operated at a high rate of speed, it is apparent that there is sound and adequate reason why a person who has pleaded or has been found guilty of reckless operation should not be permitted to continue operating until a final judgment has been rendered in his case, but should be forthwith deprived of his license, not as a punishment for the offence but as a measure of protection to the public. This, I am advised, is the view heretofore adopted by the commission in dealing with similar cases. While the question cannot be said to be entirely free from doubt, for the reasons above discussed and in view of the purpose of the statute and the obvious considerations of public safety involved, I am of opinion that the commission is so far warranted in treating a judgment of guilty as a sufficient conviction to require the revocation of the license of the person so convicted as not to be required to change the policy already pursued by it, until the precise point has been adjudicated otherwise by the courts.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Trust Company — Savings Department — Payment of Fixed Dividend requiring Transfer of Funds from General Banking Fund of Company.

The provision of St. 1908, c. 520, § 3, that the accounts of the savings department of a trust company "shall be kept separate and distinct from the general business of the corporation," prohibits the promise of a fixed dividend or rate of interest upon money deposited in the savings department of a trust company, which for its maintenance requires a transfer of funds from the general banking department of the company to the savings department.

OCT. 2, 1912.

Hon. AUGUSTUS L. THORNDIKE, *Bank Commissioner*.

DEAR SIR:— Your letter of September 24 requires my opinion as to the authority of a trust company which has established a savings department, under the provisions of St. 1908, c. 520, to promise to pay a definite rate of interest or dividends upon money deposited therein, any deficiency in the earnings of the savings department to be made up by a transfer of funds necessary to complete the required amount of dividends or interest from the general banking department of the trust company.

St. 1908, c. 520, §§ 1, 2 and 3, are as follows:—

SECTION 1. Every trust company soliciting or receiving deposits (a) which may be withdrawn only on presentation of the pass-book or other similar form of receipt which permits successive deposits or withdrawals to be entered thereon; or (b) which at the option of the trust company may be withdrawn only at the expiration of a stated period after notice of intention to withdraw has been given; or (c) in any other way which might lead the public to believe that such deposits are received or invested under the same conditions or in the same manner as deposits in savings banks; shall have a savings department in which all business relating to such deposits shall be transacted.

SECTION 2. All such deposits shall be special deposits and shall be placed in said savings department, and all loans or investments thereof shall be made in accordance with the statutes governing the investment of deposits in savings banks. The duties of the board of investment relative to the investment of such deposits shall be performed by a board or committee appointed by the board of directors of such corporation.

SECTION 3. Such deposits and the investments or loans thereof shall be appropriated solely to the security and payment of such deposits, and shall not be mingled with the investments of the capital stock or other money or property belonging to or controlled by such corporation, or be liable for the debts or obligations thereof until after the deposits in said savings department have been paid in full. The accounts and transactions of said savings department shall be kept separate and distinct from the general business of the corporation.

Section 5 of the same chapter provides that—

All income received from the investment of funds in said savings department, after deducting the expenses and losses incurred in the

management thereof and such sums as may be paid to depositors therein as interest or dividends, shall accrue as profits to such corporation and may be transferred to its general funds.

It was the obvious purpose of the provisions of chapter 520, ~~above~~ quoted, to place a trust company, so far as possible, upon the same footing as a savings bank, and to require that it be conducted entirely separate from the general business of the trust company by which it is maintained. This being so, I am of opinion that the promise of a fixed dividend or rate of interest upon money deposited in the savings department of a trust company requiring for its maintenance a transfer of funds from the general banking department of the company to the savings department, is contrary to the provision of St. 1908, c. 520, § 3, above cited, that the accounts and transactions of the savings department shall be kept separate and distinct from the general business of the company, and is therefore unauthorized.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Civil Service — Inspectors of Slaughtering.

Inspectors of slaughtering nominated and appointed under the provisions of St. 1911, c. 297, § 6, as amended by St. 1911, c. 534, § 2, are included within the terms of Civil Service Rule 7, c. 11.

OCT. 21, 1912.

MARK W. RICHARDSON, M.D., *Secretary, State Board of Health*.

DEAR SIR:— In behalf of the State Board of Health you have requested my opinion as to whether, in view of the provisions of St. 1911, c. 297, and St. 1911, c. 534, relating to the nomination, appointment and removal of inspectors of slaughtering, the inspectors nominated and appointed under those provisions of law in cities are subject to civil service law and rules.

St. 1911, c. 534, is entitled, “An Act relative to the appointment of inspectors of slaughtering,” and provides, in section 2, as follows:—

Section six of chapter two hundred and ninety-seven of the acts of the year nineteen hundred and eleven is hereby amended by striking out said section and inserting in place thereof the following:—
Section 6. For the purposes of this act inspectors shall be appointed,

shall be compensated, and may be removed in accordance with the provisions of law relating to inspectors of animals, except that the appointment of such inspectors shall be made by the local boards of health and except that in respect to such inspectors the state board of health shall perform the duties and exercise the authority imposed by law upon the chief of the cattle bureau of the state board of agriculture in respect to inspectors of animals. The first appointments under this act shall be made within thirty days after its passage.

The provisions of law relating to inspectors of animals referred to are contained in St. 1912, c. 608, § 6, providing —

The mayor and aldermen in cities, except Boston, and the selectmen in towns shall annually, in March, nominate one or more inspectors of animals, and before the first day of April shall send to the commissioner of animal industry the name, address and occupation of each nominee. Such nominee shall not be appointed until approved by the commissioner of animal industry.

The provisions of law, other than the civil service law, which are now in force with reference to the nomination, appointment and removal of inspectors of slaughtering may, therefore, be said to be in substance as follows: the boards of health in cities, except Boston, and the boards of health in towns shall annually, in March, nominate one or more inspectors of slaughtering, and before the first day of April shall send to the State Board of Health the name, address and occupation of each nominee. Such nominee shall not be appointed until approved by the State Board of Health. The aforesaid officials of cities and towns may remove any inspector, and shall thereupon immediately nominate another in his place and send notice thereof as prescribed above. In all cities at least one of the inspectors of slaughtering shall be a registered veterinary surgeon.

The question submitted, therefore, is whether, in spite of the fact that the Legislature has made provision by the statutes quoted for the nomination and appointment of inspectors of slaughtering by boards of health in cities, and for the approval by the State Board of Health of those appointed, and for the immediate filling of any vacancy which may occur, and in these statutes has made no express reference to the civil service law and rules, the position is nevertheless within the jurisdiction of the Civil Service Commission.

R. L., c. 19, authorizes the appointment of a civil service commission, and provides that the commissioners shall from time to time prepare rules regulating the selection of persons to fill appointive positions in the government of the Commonwealth and of the several cities thereof. Of the rules made under authority of that provision of law, Civil Service Rule 7, providing for the classification of the official service, includes, as class 11, "Inspectors other than inspectors of work and persons doing similar work, except railroad inspectors, in the service of the Commonwealth or of any city thereof."

In my opinion the term "inspectors," as used in the rule quoted, is sufficiently broad to include inspectors appointed under St. 1911, c. 534. The functions of the position of inspector of slaughtering, and the nature of the office itself, are not such as to bring the position within any of the general statutory exceptions from the application of the civil service law provided by R. L., c. 19, § 9, and its amendments. The fact that the successful performance of the work required in the position calls for the special qualification of professional training does not in itself except the position from the application of civil service law and rules. I am not aware of any statute which specifically excepts the office from the civil service law.

The position of inspector of slaughtering must, therefore, be held to be within the jurisdiction of the Civil Service Commission unless it can be said that the provisions of St. 1911, c. 297, and St. 1911, c. 534, show an intention on the part of the Legislature so inconsistent with the intention to subject the position to civil service law and rules as by implication to exempt the office therefrom.

In my opinion the statute is not so to be construed. At the time when the Statutes of 1911 were enacted inspectors in the service of cities were in the classified list of the civil service rules. The Legislature must be presumed to have known that the inspectors whose appointment was provided for by the Statutes of 1911 would be subjected to civil service law and rules unless they were expressly exempted therefrom by action of the Legislature. The Legislature is, therefore, in my opinion, to be considered as having provided that the local boards of health and the State Board of Health might respectively nominate, appoint and approve, but only subject to existing laws. It is to be noted that the effect of such construction is not to nullify the power of nomination, appointment and approval bestowed

upon the local boards of health and the State Board of Health, but merely to limit those powers to the extent that nominations and appointments must be made from the certified list of the Civil Service Commission, and the procedure with reference to the nomination, appointment and removal of the officials in question must be governed by civil service law and rules.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Town — Notes — Certification — Director of Bureau of Statistics — Vote to authorize Selectmen to refund Debt "upon the Passage of an Act authorizing the Same."

The vote of a town at a town meeting held on March 4, 1912, approving the action of the selectmen in asking the Legislature to authorize such town to refund its debt, and authorizing the selectmen "to refund said debt upon the passage of an act of the Legislature authorizing the same," does not constitute a valid acceptance of the authority to refund the debt in question, conferred by a statute passed on March 28 following, and the Director of the Bureau of Statistics should not certify notes issued in accordance with such vote.

Nov. 7, 1912.

CHARLES F. GETTEMY, Esq., *Director, Bureau of Statistics.*

DEAR SIR:— You have requested my opinion as to what action should be taken by you with reference to a series of notes which the town of North Reading desires to issue under St. 1912, c. 343, and which have been presented to you for certification under the provisions of St. 1910, c. 616, as amended by St. 1912, c. 45.

The facts from which the question arises are as follows: in the warrant for the town meeting of North Reading, held on March 4, 1912, appeared the following:—

ARTICLE 16. To see if the town will approve of the action of the selectmen in asking the Legislature to authorize the town to refund its debt amounting to \$9,600, and will authorize the selectmen to refund said debt upon the passage of an act of the Legislature authorizing the same.

Pursuant to that article the town voted as follows:—

ARTICLE 16. Under Article 16, upon motion of Mr. A. G. Barber, voted to approve the action of the selectmen in asking the Legisla-

ture to authorize the town to refund its debt amounting to \$9,600, and to authorize the selectmen to refund said debt upon the passage of an act of the Legislature authorizing the same.

The act of the Legislature upon the subject-matter referred to in the vote of the town was passed as St. 1912, c. 343, on March 28, 1912, and took effect upon its passage. That act provides as follows:—

SECTION 1. For the purpose of paying certain outstanding notes amounting to nine thousand six hundred dollars, the town of North Reading is hereby authorized to borrow the said sum and to issue notes therefor. One of the said notes shall be payable in each year after the said loan is made, and the amount of the first nine notes so issued shall be one thousand dollars each, and the amount of the tenth note shall be six hundred dollars. The said notes shall be signed by the treasurer and countersigned by the selectmen of the town, and shall bear interest at a rate not exceeding four and one half per cent per annum. The money required to pay the interest on said notes in each year, and that part of the principal which becomes due in that year, shall be raised by taxation in the same manner in which the other expenses of the town are provided for.

SECTION 2. This act shall take effect upon its passage.

The specific question presented by you is whether the vote quoted above constitutes sufficient authority to warrant the issue of the notes in question and their certification by you without further vote of the town.

In my opinion the question is to be answered in the negative.

At the time when the town meeting was held, on March 4, 1912, I assume that the town had no existing authority to refund the debt in question. It is at least clear that the vote of the town on that date was not effective to authorize the refunding of the debt under any other legislation than that of 1912.

The vote passed at the meeting of March 4, 1912, was an attempt to anticipate authority which the town had not yet acquired. At the time when the town thus purported to authorize the exercise of authority which it expected the Legislature to confer upon it the town did not know definitely that any such authority would be conferred upon it or what the measure or form of the authority conferred would be if conferred. It was possible that the Legislature might grant the authority in the terms asked by representatives of the town, or withhold it completely, or grant it with such qualifications and

conditions that the act when passed would not be acceptable to the town.

Upon these facts the town cannot be considered to have accepted by valid action a grant of authority which had not in fact been offered to it at the time of the vote and the form and terms of which it could not foretell.

Furthermore, the vote itself is too indefinite in its provisions to be effective. Since the act of March 28, 1912, had not been passed when the vote was taken, and since there was no certainty as to what the final form of the act might be, it is not permissible to read into the vote of March 4, 1912, the provisions of the act which was passed on March 28, 1912.

Considering the vote by itself, therefore, and apart from the statute, as it must be considered, the vote appears to be entirely lacking in any provisions as to the rate of interest, the amount of the proportionate payments, and the terms of the bonds or notes to be issued. Such a vote, without a statute to be read into it or construed with it, is inadequate to authorize the officials of the town to take the necessary steps for the issuing of the notes in question.

There is no provision in St. 1912, c. 343, that the town treasurer or other officials of the town may issue the notes without further vote of the town. Where the Legislature intends to authorize such action by the town treasurer without further vote of the town, it expresses that intention. St. 1912, c. 458, is entitled, "An Act to authorize the town of Essex to refund certain indebtedness," and section 3 of that statute provides as follows:—

The treasurer of the town of Essex, with the approval of the selectmen, is hereby authorized, without further vote of the town, to incur indebtedness under the provisions of this act for which said town shall be liable, and to issue notes of the town therefor in accordance with law.

If chapter 343 of the Acts of 1912 contained such a provision quite a different situation would be presented.

Upon the present state of facts, therefore, I have to advise you that in my opinion you should not certify the series of notes which has been presented to you for certification.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

*Public Records — Records of Public or Incorporated Hospitals
— Inspection.*

Under the provisions of St. 1905, c. 330, § 3, that the records of hospitals supported in whole or in part by contributions from the Commonwealth or from any municipality, and incorporated hospitals offering treatment to patients free of charge or conducted as public charities, "shall not be open to public inspection until they are produced in court by the person having the custody of the same," the superintendent or other officer in charge of such institution is not required or permitted to furnish any person with a copy of any part of such record.

Nov. 22, 1912.

E. V. SCRIBNER, M.D., *Superintendent, Worcester State Hospital.*

DEAR SIR: — I have received your letter stating that you have received a request from an attorney representing a patient who was formerly under the care of the Worcester State Hospital, that you furnish a detailed record of the history of the patient's case, and asking my opinion upon the questions, first, whether you are compelled by law to furnish a copy of the records to the person requesting it; and second, whether, if not compelled to furnish such copy, it is lawful for you to furnish it if you deem it best.

The answers to both questions are found in the provisions of St. 1905, c. 330. The amended provisions are as follows: —

SECTION 1. Hospitals supported in whole or in part by contributions from the Commonwealth or from any municipality, incorporated hospitals offering treatment to patients free of charge, and incorporated hospitals conducted as public charities, shall keep records of the cases under their care and the history of the same in books kept for that purpose.

SECTION 2 [as amended by St. 1908, c. 269]. Such records, and similar records kept prior to April twenty-fifth, nineteen hundred and five, shall be in the custody of the person in charge of the hospital, and shall be admissible as evidence in the courts of the Commonwealth as to all matters therein contained.

SECTION 3. Section seventeen of chapter thirty-five of the Revised Laws shall not apply to such records, and they shall not be open to public inspection until they are produced in court by the person having the custody of the same.

You are, therefore, not only not compelled to furnish a copy of the records, but by statutory provision the furnishing of such

copy is expressly prohibited, and the usual provision of law that every person having the custody of public records shall at reasonable times permit inspection of those records and furnish copies thereof on payment of reasonable fees, is made inapplicable to the records of patients in a State insane hospital.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Lottery — Element of Chance — Voting Contest.

An arrangement or contract entered into by a foreign corporation dealing in ponies, with certain merchants and managers of theatres within the Commonwealth, by which each such merchant or manager contracting with the pony company issues to every customer for each 25 cents received 25 votes, which may be cast by the bearer in favor of any contestant in a contest in which the person receiving the highest number of votes is entitled to a pony and outfit from such company, involves no element of chance, and therefore does not constitute a lottery within the meaning of the several sections of R. L., c. 214, which prohibit lotteries within the Commonwealth.

Nov. 22, 1912.

Gen. J. H. WHITNEY, *Chief of the District Police*.

DEAR SIR:— You have requested my opinion as to whether the operation of a certain arrangement entered into by various managers of theatres and other buildings licensed by your department is subject to the provisions of the laws of this Commonwealth prohibiting setting up, promoting, permitting, advertising, or in any manner participating or assisting in the operation of a lottery.

The arrangement in question is substantially as follows: a pony company of Ohio makes contracts with various theatre owners and merchants by the terms of which a voting contest is carried on in connection with the management of the theatre or business for the purpose of advertising the ponies of the Ohio company. Each theatre owner or merchant contracting with the pony company issues to every customer for each 25 cents received, either for admission tickets or for merchandise, 25 votes. These votes so received may be cast by the bearer in favor of any contestant, and the contestant securing the highest number of votes receives a pony and outfit from the Ohio company. In case of a tie the value of the pony and outfit is divided among those having an equal number of votes.

Without assuming to refer to all the provisions of Massachusetts law aimed at the prevention of the operation of lotteries, most of which provisions are embodied in chapter 214 of the Revised Laws, the following section may be cited as fairly illustrating the policy of the law upon the subject:—

SECTION 7. Whoever sets up or promotes a lottery for money, or by way of lottery disposes of any property of value, or under the pretext of a sale, gift or delivery of other property or of any right, privilege or thing whatever disposes of or offers or attempts to dispose of any property, with intent to make the disposal thereof dependent upon or connected with chance by lot, dice, numbers, game, hazard or other gambling device, whereby such chance or device is made an additional inducement to the disposal or sale of said property, and whoever aids either by printing or writing, or is in any way concerned, in the setting up, managing or drawing of such lottery, or in such disposal or offer or attempt to dispose of property by such chance or device, shall for each offence be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year.

“Lottery” is defined in the Century Dictionary as follows:—

1. Distribution of anything by lot; allotment; also, the drawing of lots; determination by chance or fate; random choice; matter of chance; as, the *lottery* of life. 2. A scheme for raising money by selling chances to share in a distribution of prizes; more specifically, a scheme for the distribution of prizes by chance among persons purchasing tickets, the correspondingly numbered slips or lots, representing prizes or blanks, being drawn from a wheel on a day previously announced in connection with the scheme of intended prizes. 3. The lot or portion falling to one's share; a chance allotment or prize.

In all these definitions chance is the essential element. If the element of chance is absent the things which are necessary to constitute a lottery are not present.

An analysis of the plan submitted as that operated under the contract between the pony company and the theatre managers and merchants fails to reveal any element of chance. Everything is determined by a definite and invariable rule in advance, except the question as to who shall receive the votes which are cast, and that question is in no way determined by chance.

Tickets of admission and articles of merchandise are for sale to everybody. Everybody who pays 25 cents, or any multiple thereof, either for tickets or merchandise receives a certain fixed number of votes for each 25 cents paid. Each person having received his votes is free to cast them for whomsoever he chooses, and his own choice is determined absolutely and solely by his own preference, which is expressed at his own volition. Whether his personal choice proves to be the winner of the contest depends not at all upon chance but merely upon whether a sufficient number of other voters have exercised their will in the same manner and given effect to the same preference, and that question is determined not by lot or by hazard but by the ordinary processes of arithmetic.

In my opinion, therefore, the arrangement in question is not a lottery and is not within the scope of the description of the kindred evils for the suppression of which provision is made by chapter 214 of the Revised Laws, and its amendments.

While no similar arrangement appears to have been under the consideration of the courts of this Commonwealth, a discussion of a case very similar in its facts is to be found in the opinion of the court in *Quatsoe v. Eggleston*, 42 Ore. 315, in which the court held that since "the award of the pianos which are proposed to be given away as an inducement is not made by chance or lot, but by the affirmative and conscious act and will of the holders of tickets obtained with goods purchased at the defendant's store," the scheme did not constitute a lottery.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Insurance — Steam Boilers — Inspection by Insurance Companies — Certificate.

Under the provisions of St. 1907, c. 465, § 17, as amended by St. 1912, c. 531, § 7, that "insurance companies engaged in the business of inspecting and insuring steam boilers shall, after each internal and external inspection, if the boiler and its appendages conform to the rules formulated by the Board of Boiler Rules, and if they deem the boiler to be in safe working condition otherwise, issue a certificate of inspection . . .," it is the duty of an insurance company making such inspection to issue a certificate upon each inspection without regard to the purpose for which such inspection is made.

DEC. 1, 1912.

Gen. J. H. WHITNEY, *Chief of the District Police.*

DEAR SIR: — You have requested my opinion as to the construction to be given to St. 1907, c. 465, § 17, as amended by St. 1912, c. 531, § 7, with reference to the inspection of steam boilers by insurance companies engaged in the business of inspecting and insuring steam boilers within this Commonwealth. The statute in its amended form provides as follows: —

Insurance companies engaged in the business of inspecting and insuring steam boilers shall, after each internal and external inspection, if the boiler and its appendages conform to the rules formulated by the board of boiler rules, and if they deem the boiler to be in safe working condition otherwise, issue a certificate of inspection stating the maximum pressure at which the boiler may be operated. This maximum pressure shall be determined under the rules established by the board of boiler rules.

It appears that certain companies duly authorized to insure steam boilers in this Commonwealth from time to time inspect boilers upon which the owners desire to place insurance, or inspect such boilers for the information of the owner or prospective purchaser, and that these companies contend that they are not required by the law to issue certificates after inspections for such purposes.

Your question is whether the insurance companies authorized to engage in the business of insuring and inspecting boilers in this Commonwealth are required by the statute to issue a certificate of inspection after an inspection for such purposes as those above mentioned.

The statute prescribes that after each internal and external inspection, if the boiler and its appendages conform to the rules, and if it is deemed to be in safe working condition otherwise, a certificate of inspection shall be issued. The provision is not that after every annual inspection, or that after every regular inspection, or that after every inspection which the insurance company chooses to designate as an inspection made in accordance with the requirements of law a certificate shall be issued. No exception is made by the terms of the statute. An inspection is an inspection, whatever its object, and so far as appears from the statute one internal and external inspection does not differ from another. The statute does not fix any time for making

inspections. It merely provides that inspections shall be made at intervals of not more than one year. It is, therefore, not open to the insurance companies to designate one of several inspections as the inspection required by law, and to refuse to issue a certificate upon any other inspection. It is not open to the insurance companies to make distinctions between inspections which the statute itself does not make.

From the comprehensive language used in the statute it would seem to have been the intent of the Legislature that the latest inspection should be the one upon which the certificate in force is based, and to have the certified condition of the boiler kept up to date as closely as possible. That such was the intent of the Legislature is also indicated by the provisions of section 10 of chapter 465 of the Acts of 1907, which prescribe that every insurance company shall forward to the chief inspector of boilers, within fourteen days after each internal and external inspection, reports of all boilers so inspected by it. That is in effect a requirement that the chief inspector of boilers shall have the benefit of all information up to date which the insurance companies have acquired in the transaction of their business.

In my opinion, therefore, the interpretation given to the statute by you is correct, and the insurance companies are required to issue a certificate after every inspection, whatever may have been the object of or reason for the inspection.

Very truly yours.

JAMES M. SWIFT, *Attorney-General*.

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HAS APPEARED
DURING THE YEAR 1912.

GRADE CROSSINGS.

Notices have been served upon this department of the filing of the following petitions for the appointment of special commissioners for the abolition of grade crossings:—

Berkshire County.

Adams. Hoosac Valley Street Railway Company, petitioners.

Petition for abolition of Commercial Street crossing in Adams. George W. Wiggin, William W. McClench and Edmund K. Turner appointed commissioners. Commissioners' report filed. Frank H. Cande appointed auditor. Auditor's fourth report filed. Pending.

Great Barrington, Selectmen of, petitioners. Petition for the abolition of a grade crossing in the village of Housatonic in said town. John J. Flaherty, Edmund K. Turner and Stephen S. Taft appointed commissioners. Commissioners' report filed. Frank N. Nay appointed auditor. Auditor's third report filed. Pending.

Lanesborough, Selectmen of, petitioners. Petition for abolition of Valley Road and Glen Road crossings. Railroad Commissioners appointed commissioners. Commissioners' report filed. Frank H. Cande appointed auditor. Auditor's first report filed. Pending.

North Adams. Hoosac Valley Street Railway Company, petitioners. Petition for abolition of Main Street crossing, known as Braytonville crossing, in North Adams. Edmund K. Turner, William W. McClench and Joseph P. Magenis appointed commissioners. Commissioners' report filed. Frank H. Cande appointed auditor. Auditor's second report filed. Pending.

North Adams, Mayor and Aldermen of, petitioners. Petition for abolition of State Street and Furnace Street crossings. Edmund K. Turner, David F. Slade and William G. McKechnie appointed commissioners. Commissioners' report filed. Pending.

Pittsfield, Mayor and Aldermen of, petitioners. Petition for abolition of Merrill crossing in Pittsfield. Thomas W. Ken-

- nefick, Frederick L. Green and Edmund K. Turner appointed commissioners. Pending.
- Stockbridge, Selectmen of, petitioners. Petition for the abolition of "River Road" crossing in Stockbridge. James B. Carroll, Edward B. Bishop and Luther Dean appointed commissioners. Commissioners' report filed. Wade Keyes appointed auditor. Auditor's second report filed. Pending.
- Stockbridge, Selectmen of, petitioners. Petition for abolition of South Street crossing. Railroad commissioners appointed commissioners. Commissioners' report filed. A. W. DeGoosh appointed auditor. Auditor's first report filed. Pending.
- Stockbridge, Berkshire Railroad, petitioner. Petition for abolition of Glendale station crossing. Pending.
- West Stockbridge, Selectmen of, petitioners. Petition for abolition of grade crossing at Albany Street. Pending.

Bristol County.

- Attleborough, Selectmen of, petitioners. Petition for abolition of West Street, North Main Street and other crossings in Attleborough. James R. Dunbar, Henry L. Parker and William Jackson appointed commissioners. Commissioners' report filed. Chas. P. Searle appointed auditor. Auditor's seventh report filed. Pending.
- Fall River, Mayor and Aldermen of, petitioners. Petition for abolition of Brownell Street crossing and other crossings in Fall River. John Q. A. Brackett, Samuel N. Aldrich and Charles A. Allen appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's nineteenth report filed. Pending.
- Mansfield, Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of grade crossing at North Main, Chauncey, Central, West, School and Elm streets in Mansfield. Samuel L. Powers, Stephen S. Taft and Wm. Jackson appointed commissioners. George F. Swain appointed commissioner in place of Wm. Jackson, deceased. Pending.
- New Bedford, Mayor and Aldermen of, petitioners. Petition for abolition of certain grade crossings in New Bedford. George F. Richardson, Horatio G. Herrick and Wm. Wheeler appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's fifteenth report filed. Pending.

Somerset. New York, New Haven & Hartford Railroad Company, petitioner. Petition for abolition of grade crossing at Wilbur Avenue. James D. Colt, Henry H. Baker and Louis Perry appointed commissioners. Commissioners' report filed. Pending.

Swansea. New York, New Haven & Hartford Railroad Company, petitioner. Petition for abolition of grade crossing at River Road. James D. Colt, Henry H. Baker and Louis Perry appointed commissioners. Commissioners' report filed. Pending.

Taunton, Mayor and Aldermen of, petitioners. Petition for abolition of grade crossings at Danforth and other streets in Taunton. Thomas M. Babson, George F. Swain and Edwin U. Curtis appointed commissioners. Charles H. Beckwith appointed commissioner in place of Thomas M. Babson, deceased. Pending.

Essex County.

Georgetown, Selectmen of, petitioners. Petition for abolition of grade crossing at Weston's Crossing. Pending.

Gloucester. Boston & Maine Railroad, petitioner. Petition for abolition of crossings at Magnolia Avenue and Brays crossing. Arthur Lord, Moody Kimball and P. H. Cooney appointed commissioners. Commissioners' report filed. A. W. De Goosh appointed auditor. Auditor's first report filed. Pending.

Gloucester. Directors of Boston & Maine Railroad, petitioners. Petition for abolition of grade crossing between Washington Street and tracks of Boston & Maine Railroad. Pending.

Haverhill, Mayor and Aldermen of, petitioners. Petition for abolition of Washington Street and other crossings in Haverhill. George W. Wiggin, William B. French and Edmund K. Turner appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. E. A. McLaughlin appointed auditor in place of Fred E. Jones, deceased. Auditor's twelfth report filed. Pending.

Ipswich, Selectmen of, petitioners. Petition for abolition of High Street and Locust Street crossings. Geo. W. Wiggin, Edmund K. Turner and William F. Dana appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's third report filed. Pending.

- Lawrence. Boston & Maine Railroad, petitioner. Petition for abolition of crossings at Chickering Street. Moody Kimball, James C. Poor and John M. Grosvenor, Jr., appointed commissioners. Petition withdrawn.
- Lawrence, Mayor and Aldermen of, petitioners. Petition for abolition of crossing at Merrimac and other streets in Lawrence. Robert O. Harris, Edmund K. Turner and Henry V. Cunningham appointed commissioners. Pending.
- Lynn, Mayor and Aldermen of, petitioners. Petition for abolition of Summer Street and other crossings on Saugus branch of Boston & Maine Railroad and Market Street and other crossings on main line. George W. Wiggin, Edgar R. Champlin and Edmund K. Turner appointed commissioners. Commissioners' report filed. Edward A. McLaughlin appointed auditor. Auditor's second report filed. Pending.
- Lynn, Mayor and Aldermen of, petitioners. Petition for abolition of grade crossings at Pleasant and Shepard streets, Gas Wharf Road and Commercial Street, on the Boston, Revere Beach & Lynn Railroad. Pending.
- Salem. Directors of Boston & Maine Railroad, petitioners. Petition for the abolition of grade crossings at Bridge, Washington, Mill, North, Flint and Grove streets in Salem. Patrick H. Cooney, George F. Swain and William A. Dana appointed commissioners. Pending.
- Salem, Mayor and Aldermen of, petitioners. Petition for abolition of Lafayette Street crossing in Salem. Pending.

Franklin County.

- Deerfield, Selectmen of, petitioners. Petition for abolition of "Upper Wisdom Road" crossing. Edmund K. Turner, Calvin Coolidge and Hugh P. Drysdale appointed commissioners. Commissioners' report filed. Lyman W. Griswold appointed auditor. Auditor's first report filed. Pending.
- Greenfield, Selectmen of, petitioners. Petition for the abolition of Allen and Russell streets crossings in Greenfield. Edmund K. Turner, Walter P. Hall and Fred D. Stanley appointed commissioners. Stephen S. Taft appointed auditor. Auditor's first report filed. Pending.
- Greenfield, Selectmen of, petitioners. Petition for abolition of grade crossing at Silver Street. Stephen S. Taft, Henry P. Field and Thomas J. O'Connor appointed commissioners. Pending.

Northfield, Selectmen of, petitioners. Petition for abolition of crossing on road to South Vernon. Edmund K. Turner, Charles W. Hazelton and Charles H. Innes appointed commissioners. Commissioners' report filed. Pending.

Hampden County.

Palmer, Selectmen of, petitioners. Petition for abolition of Burley's crossing in Palmer. Pending.

Russell, Selectmen of, petitioners. Petition for abolition of Montgomery Road crossing. Railroad Commissioners appointed commissioners. Commissioners' report filed. Thomas W. Kennefick appointed auditor. Auditor's second report filed. Pending.

Westfield, Attorney-General, petitioner. Petition for abolition of grade crossings at Lane's and Lee's crossings in Westfield. Patrick H. Cooney, Richard W. Irwin and Franklin T. Hammond appointed commissioners. Chas. E. Hibbard appointed commissioner in place of Richard W. Irwin, resigned. Pending.

Hampshire County.

Amherst, Selectmen of, petitioners. Petition for abolition of grade crossings at Whitney, High and Main streets. Railroad Commissioners appointed commissioners. Pending.

Belchertown, Selectmen of, petitioners. Petition for the abolition of crossing of road from Belchertown to Three Rivers and road from Bondville to Ludlow. Edmund K. Turner, F. G. Wooden and George P. O'Donnell appointed commissioners. Commissioners' report filed. Pending.

Easthampton, Selectmen of, petitioners. Petition for abolition of grade crossing at Holyoke Road, Mt. Tom crossing. Dismissed.

Middlesex County.

Acton, Selectmen of, petitioners. Petition for abolition of Great Road crossing in Acton. Benj. W. Wells, George D. Burrage and William B. Sullivan appointed commissioners. Commissioners' report filed. Fred Joy appointed auditor. Pending.

Belmont, Selectmen of, petitioners. Petition for abolition of crossings at Waverley station. Thomas W. Proctor, Patrick H. Cooney and Desmond FitzGerald appointed commissioners. Pending.

- Chelmsford, Selectmen of, petitioners. Petition for abolition of grade crossing at Middlesex Street. Pending.
- Framingham, Selectmen of, petitioners. Petition for the abolition of Marble Street crossing. Pending.
- Framingham, Selectmen of, petitioners. Petition for the abolition of Concord Street crossing. Pending.
- Framingham, Selectmen of, petitioners. Petition for the abolition of Waverly Street crossing. Pending.
- Framingham, Selectmen of, petitioners. Petition for the abolition of Bishop Street crossing. Pending.
- Framingham, Selectmen of, petitioners. Petition for the abolition of Hollis and Waushakum streets crossings. Pending.
- Framingham, Selectmen of, petitioners. Petition for the abolition of Claflin Street crossing. Pending.
- Framingham, Selectmen of, petitioners. Petition for abolition of grade crossing at Willis Crossing. Pending.
- Lowell, Mayor and Aldermen of, petitioners. Petition for abolition of Middlesex and Thorndike streets crossings. Pending.
- Lowell, Mayor and Aldermen of, petitioners. Petition for abolition of Boston Road or Plain Street, School, Walker and Lincoln streets crossings. Arthur Lord, David F. Slade and Henry A. Wyman appointed commissioners. Commissioners' report filed. A. W. De Goosh appointed auditor. Auditor's second report filed. Pending.
- Lowell, Mayor and Aldermen of, petitioners. Petition for abolition of crossing at Western Avenue and Fletcher Street. Pending.
- Malden. Directors of Boston & Maine Railroad Company, petitioners. Petition for abolition of Medford Street and other crossings in Malden. Geo. W. Wiggin, Robert O. Harris and Edmund K. Turner appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's fourth report filed. Pending.
- Malden, Mayor and Aldermen of, petitioners. Petition for abolition of Pleasant and Winter streets crossing in Malden. George W. Wiggin, Edmund K. Turner and Fred Joy appointed commissioners. Commissioners' report filed. Winfield S. Slocum appointed auditor. Auditor's fifth report filed. Pending.
- Marlborough, Mayor and Aldermen of, petitioners. Petition for abolition of Hudson Street crossing in Marlborough. Walter

Adams, Charles A. Allen and Alpheus Sanford appointed commissioners. Commissioners' report filed. Pending.

Natick. Boston & Worcester Street Railway Company, petitioners. Petition for alteration of Worcester Street crossing in Natick. Geo. W. Wiggin, Edmund K. Turner and Larkin T. Trull appointed commissioners. Commissioners' report filed. Theo. C. Hurd appointed auditor. Auditor's second report filed. Pending.

Newton, Mayor and Aldermen of, petitioners. Petition for the abolition of Concord Street and Pine Grove Avenue crossings in Newton. George W. Wiggin, T. C. Mendenhall and Edmund K. Turner appointed commissioners. Pending.

Newton, Mayor and Aldermen of, petitioners. Petition for the abolition of Glen Avenue and nine other crossings in Newton. Geo. W. Wiggin, T. C. Mendenhall and Edmund K. Turner appointed commissioners. Commissioners' report filed. Patrick H. Cooney appointed auditor. Auditor's seventeenth report filed. Pending.

North Reading, Selectmen of, petitioners. Petition for abolition of Main Street crossing in North Reading. Alpheus Sanford, George N. Poor and Louis M. Clark appointed commissioners. Report of commissioners filed. Thomas W. Proctor appointed auditor. Auditor's first report filed. Pending.

Somerville, Mayor and Aldermen of, petitioners. Petition for abolition of Park Street, Dane Street, Somerville Avenue and Medford Street crossings in Somerville. George W. Wiggin, George F. Swain and James D. Colt appointed commissioners. Commissioners' report filed. Patrick H. Cooney appointed auditor. Auditor's eighth report filed. Pending.

Wakefield, Selectmen of, petitioners. Petition for abolition of Hanson Street crossing in Wakefield. Pending.

Waltham, Mayor and Aldermen of, petitioners. Petition for abolition of South Street crossing in Waltham. Geo. F. Swain, — — — and Geo. A. Sanderson appointed commissioners. Pending.

Waltham, Mayor and Aldermen of, petitioners. Petition for abolition of Moody Street, Main Street, Elm Street, River Street, Pine Street, Newton Street and Calvary Street crossings in Waltham. Arthur Lord, Patrick H. Cooney and George F. Swain appointed commissioners. Pending.

- Watertown, Selectmen of, petitioners. Petition for abolition of grade crossings at Cottage, Arlington, School, Irving and other streets in Watertown. Pending.
- Wayland, Selectmen of, petitioners. Petition for abolition of grade crossing at State Road. Pending.
- Weston, Selectmen of, petitioners. Petition for abolition of Church Street, Pigeon Hall and Concord Road crossings. Railroad Commissioners appointed commissioners. Commissioners' report filed. Joseph W. Lund, Esq., appointed auditor. Auditor's first report filed. Pending.
- Weston, Selectmen of, petitioners. Petition for abolition of grade crossings at Central Avenue, Conant Road, Church and Viles streets. P. H. Cooney, Louis A. Frothingham and Andrew M. Lovis appointed commissioners. Pending.
- Winchester, Selectmen of, petitioners. Petition for the abolition of crossing at Winchester station square. George W. Wiggin, George F. Swain and Arthur Lord appointed commissioners. Pending.

Norfolk County.

- Braintree, Selectmen of, petitioners. Petition for the abolition of the Pearl Street crossing at South Braintree. Patrick H. Cooney, Frank N. Nay and George F. Swain appointed commissioners. Pending.
- Braintree. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of grade crossing at School, Elm, River and Union streets in Braintree. John L. Bates, Winfield S. Slocum and Arthur H. Wellman appointed commissioners. Commissioners' report filed. Pending.
- Brookline. Directors of Boston & Albany Railroad Company, petitioners. Petition for the abolition of Kerrigan Place crossing in Brookline. William Sullivan, Henry M. Hutchings and Wade Keyes appointed commissioners. Commissioners' report filed. Henry M. Hutchings appointed auditor. Auditor's second report filed. Pending.
- Canton. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of Dedham Road crossing in Canton. Samuel L. Powers, Stephen S. Taft and Wm. Jackson appointed commissioners. Commissioners' report filed. Pending.
- Dedham, Selectmen of, petitioners. Petition for the abolition of Eastern Avenue and Dwight Street crossings in Dedham.

Alpheus Sanford, Charles Mills and J. Henry Reed appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Pending.

Foxborough. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of grade crossing at Cohasset and Summer streets in Foxborough. Samuel L. Powers, Stephen S. Taft and Wm. Jackson appointed commissioners. Commissioners' report filed. Pending.

Hyde Park, Selectmen of, petitioners. Petition for abolition of Fairmount Avenue and Bridge Street crossings in Hyde Park. Boyd B. Jones, Edmund K. Turner and Fred Joy appointed commissioners. Commissioners' report filed. Thomas W. Proctor appointed auditor. Auditor's third report filed. Pending.

Needham, Selectmen of, petitioners. Petition for abolition of Charles River Street crossing in Needham. Pending.

Norfolk. Agreement approved by the Railroad Commissioners for the abolition of crossing at Grove Street, near City Mills station. Disposed of.

Quincy. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of Saville and Water streets crossings in Quincy. John L. Bates, Winfield S. Slocum and Arthur H. Wellman appointed commissioners. Pending.

Sharon. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of grade crossing at Depot, Garden and Mohawk streets in Sharon. Samuel L. Powers, Stephen S. Taft and Wm. Jackson appointed commissioners. Commissioners' report filed. Pending.

Walpole, Selectmen of, petitioners. Petition for abolition of Oak Street crossing and other crossings in Walpole. Dana Malone, Edmund K. Turner and Henry A. Wyman appointed commissioners. Commissioners' report filed. N. L. Sheldon appointed auditor. Auditor's fourth report filed. Pending.

Westwood. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of Green Lodge Street crossing in Westwood. Samuel L. Powers, Stephen S. Taft and Wm. Jackson appointed commissioners. Commissioners' report filed. Pending.

Suffolk County.

- Boston, Mayor and Aldermen of, petitioners. Petition for abolition of Dudley Street crossing in Dorchester. Thomas Post, Fred Joy and Edmund K. Turner appointed commissioners. Commissioners' report filed. James D. Colt appointed auditor. Auditor's tenth report filed. Pending.
- Boston. New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of Neponset and Granite avenues crossings in Dorchester. Pending.
- Boston, Mayor and Aldermen of, petitioners. Petition for abolition of Freeport, Adams, Park, Mill and Walnut streets and Dorchester Avenue crossings. James R. Dunbar, Samuel L. Powers and Thomas W. Proctor appointed commissioners. Commissioners' report filed. Arthur H. Wellman appointed auditor. Auditor's fifteenth report filed. Pending.
- Boston, Mayor and Aldermen of, petitioners. Petition for the abolition of the Essex Street crossing in Brighton. George W. Wiggin, William B. French and Winfield S. Slocum appointed commissioners. Pending.
- Boston, Mayor and Aldermen of, petitioners. Petition for abolition of Blue Hill Avenue and Oakland Street crossings in Boston. William B. French, Arthur H. Wellman and George A. Kimball appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's twenty-first report filed. Pending.
- Boston, Mayor and Aldermen of, petitioners. Petition for abolition of all crossings in East Boston. George W. Wiggin, William B. French and Edward B. Bishop appointed commissioners. Commissioners' report filed. Winfield S. Slocum appointed auditor. Auditor's fourteenth report filed. Pending.
- Boston, Mayor and Aldermen of, petitioners. Petition for abolition of crossings at Saratoga, Maverick and Marginal streets in East Boston. Railroad Commissioners appointed commissioners. Commissioners' report filed. Pending.
- Revere, Selectmen of, petitioners. Petition for abolition of Winthrop Avenue crossing in Revere of the Boston, Revere Beach & Lynn Railroad. Pending.

Worcester County.

- Clinton, Selectmen of, petitioners. Petition for abolition of Sterling, Water, Main, High and Woodlawn streets crossings. George W. Wiggin, William E. McClintock and James A. Stiles appointed commissioners. Commissioners' report filed. David F. Slade appointed auditor. Pending.
- Fitchburg, Mayor and Aldermen of, petitioners. Petition for abolition of Rollstone Street crossing in Fitchburg. Edmund K. Turner, Edwin U. Curtis and Ernest H. Vaughan appointed commissioners. Commissioners' report filed. James A. Stiles appointed auditor. Auditor's fourth report filed. Pending.
- Harvard. Boston & Maine Railroad, petitioner. Petition for abolition of a grade crossing near Harvard station. Pending.
- Holden, Selectmen of, petitioners. Petition for abolition of Dawson's crossing and Cedar Swamp crossing in Holden. Charles A. Allen, Arthur P. Rugg and Henry G. Taft appointed commissioners. Commissioners' report filed. H. L. Parker appointed auditor. Auditor's second report filed. Pending.
- Hubbardston, Selectmen of, petitioners. Petition for abolition of Depot Road crossing in Hubbardston. Pending.
- Leominster, Selectmen of, petitioners. Petition for abolition of Water, Summer, Mechanic and Main streets crossings. George W. Wiggin, George F. Swain and Charles D. Barnes appointed commissioners. Commissioners' report filed. Pending.
- Southborough, Selectmen of, petitioners. Petition for abolition of crossing on road from Southborough to Framingham. Samuel W. McCall, Louis A. Frothingham and Eugene C. Hultman appointed commissioners. Commissioners' report filed and recommitted. Pending.
- Southborough, Selectmen of, petitioners. Petition for abolition of Main Street crossing at Fayville in Southborough. Pending.
- West Boylston. Boston & Maine Railroad Company, petitioners. Petition for abolition of Prescott Street crossing. Pending.
- Worcester, Mayor and Aldermen of, petitioners. Petition for abolition of crossings at Exchange, Central and Thomas

and other streets. Arthur Lord, George F. Swain and Fred Joy appointed commissioners. Pending.

Worcester, Mayor and Aldermen of, petitioners. Petition for abolition of Grafton Street crossing and eight other crossings, including alterations of Union Station. James R. Dunbar, James H. Flint and George F. Swain appointed commissioners. Commissioners' report filed. James A. Stiles appointed auditor. Auditor's fifty-sixth report filed. Pending.

CASES ARISING IN THE COURTS.

UNDER THE

ACTS RELATIVE TO INHERITANCE AND SUCCESSION TAXES.

PETITIONS FOR INSTRUCTIONS.

Bristol County.

Stavers, John W., estate of. Caroline Stavers, administratrix.
Disposed of.

Essex County.

Clines, Mary G., estate of. Catherine A. Laycock, administratrix. Petition for abatement of inheritance tax. Pending.

Meserve, Chastina S., estate of. James W. Leitch, executor. Petition for abatement of inheritance tax. Pending.

Nichols, Mary C., estate of. Frank O. Woods, executor. Pending.

Towne, Joseph H., estate of. Charles W. Richardson, trustee. Decree.

Hampshire County.

Welton, Walter B., estate of. Henry W. Kidder, administrator. Pending.

Middlesex County.

Blood, Benjamin F., estate of. Stanley R. Bryant *et al.*, executors. Pending.

Bouton, Eliza J., estate of. Louis Bell *et al.*, executors, petitioners. Pending.

Perry, Emery B., estate of. Thomas Weston, executor. Pending.

Proudfoot, David, *et al. v.* Third Congregational Society in Cambridge *et al.* Pending.

Norfolk County.

Fisher, Charles H., estate of. Lydia M. Fisher, executrix. Pending.

Kaffenburgh, Isaac, estate of. Helene W. Kaffenburgh *et als.*, executors, petitioners. Pending.

Tobin, Ellen A., estate of. William Sullivan, executor. Pending.

Tobin, Lawrence, absentee, estate of. Howard A. Wilson, receiver, petitioner. Pending.

Plymouth County.

Blenkinsop, James S., estate of. John R. Mills, administrator. Petition for abatement of inheritance tax. Pending.

Peirce, Harriot O., estate of. Osgood Putnam, executor. Petition for abatement of inheritance tax. Pending.

Suffolk County.

Baker, Charlotte A., estate of. Frank N. Nay *et als.*, executors. Decree.

Belknap, Henry, estate of. Francis Peabody, Jr., *et al.*, executors. Decree.

Billings, Rebecca C., estate of. Smith, Charles Gaston, *et al.*, trustees, *v.* Carl Youngren *et al.*, executors. Pending.

Burnham, John A., estate of. William A. Burnham *et al.*, petitioners. Pending.

Dwight, Mary S., estate of. Grenville Clark *et als.*, petitioners. Pending.

Frederick, Walter E., trustee, *v.* John C. Gray, executor. Disposed of.

Kelly, Thomas, estate of. Harriet L. Kelly, petitioner. Pending.

Park, William D., estate of. Osmond S. Park, executor. Petition for abatement of inheritance tax. Pending.

Phillips, Charles H., estate of. Old Colony Trust Company, executor, petitioner. Pending.

Sweetser, Frank D., estate of. Charles N. Barney, administrator *c. t. a.* Reserved for full court. Rescript.

Worcester County.

Metcalf, Caleb B., estate of. George L. Clark, executor. Pending.

INVENTORIES.

Barnstable County.

- Clark, Achsah S., estate of. Lewis F. Clark, administrator.
Final decree.
- Matheson, Sarah A., estate of. Henry A. Ellis, administrator.
Dismissed.

Berkshire County.

- Hall, R. George, estate of. George W. Hall, administrator.
Dismissed.
- Roberts, Herbert I., estate of. Lura M. Roberts, administratrix.
Pending.
- Sperry, Caroline A., estate of. William H. Sperry, executor.
Dismissed.
- Sperry, Charles Louis, estate of. William H. Sperry, administrator. Dismissed.
- Tucker, Delia, estate of. Lucy E. Hawks, administratrix. Dismissed.
- Tymeson, Edward, estate of. William E. Tymeson, administrator. Dismissed.

Bristol County.

- Crowley, Abby A., estate of. Charles L. Baker, administrator.
Dismissed.
- Dufault, Albini J. U., estate of. Jos. A. Beauchmin, executor.
Dismissed.
- Duffy, Michael, estate of. Annie Duffy, administratrix. Dismissed.
- Fleming, Bridget, estate of. Mary Harrington, executrix. Dismissed.
- Fortes, Jose F., estate of. Henry E. Woodward, administrator.
Pending.
- Lopes, Guiadino, estate of. James F. Kiernan, administrator.
Dismissed.
- O'Hara, Mary, estate of. Stephen O'Hara, administrator. Dismissed.
- Sherman, William D., estate of. Emma L. Wood, executrix.
Dismissed.
- Walsh, Arthur G., estate of. Mary J. Walsh, administratrix.
Dismissed.
- Walsh, Patrick C., estate of. Annie M. Walsh, administratrix.
Pending.

Essex County.

- Adams, Isaac, estate of. Oliver E. Williams *et al.*, executors.
Dismissed.
- Arey, Sylvanus R., estate of. Ida M. Arey, executrix. Dis-
missed.
- Brown, Lucy R., estate of. Nellie Brown, administratrix.
Pending.
- Burke, Catherine, estate of. Mary J. Burke, administratrix.
Dismissed.
- Cleaves, Annie, estate of. Benjamin F. Cleaves, administrator.
Decree.
- Cook, Katherine F., estate of. Thomas M. Cook, administrator.
Dismissed.
- Crooker, John W., estate of. William W. Crooker, adminis-
trator. Dismissed.
- Crowley, Peter, estate of. Dennis J. Crowley, executor. Dis-
missed.
- Driscoll, Cornelius, estate of. Julia A. Driscoll, administratrix.
Pending.
- Fessenden, Laura M., estate of. William E. Fessenden, admin-
istrator. Dismissed.
- Foley, Winifred, estate of. John J. Foley, administrator. Dis-
missed.
- Freytag, Oswald, estate of. John A. O'Mahoney, executor.
Dismissed.
- Fuller, Addie, estate of. David T. Fuller, administrator. Dis-
missed.
- Gay, Elizabeth L., estate of. John James Gay, administrator.
Dismissed.
- Gould, George, estate of. Samuel Gould, administrator. Dis-
missed.
- Green, Margaret, estate of. Thomas F. Little, executor. Dis-
missed.
- Kyrouz, Eva T., estate of. Thomas N. Kyrouz, administrator.
Final decree.
- Leone, Joseph, estate of. Alphonse Leone, administrator.
Pending.
- McDonald, Patrick, estate of. Thomas D. Snow, administrator.
Dismissed.
- McEvoy, Grace V., estate of. Catherine G. McEvoy, executrix.
Unable to locate. Dismissed without prejudice.

Murray, Edward F., estate of. Frank J. Murray, administrator. Dismissed.

Murray, James H., estate of. Alexander M. Murray, administrator. Dismissed.

Nourse, Harrison, estate of. George L. Nourse, administrator. Dismissed.

O'Brien, Nellie M., estate of. Thomas F. Little, executor. Dismissed.

Sanborn, Frank A., estate of. James W. Sullivan, administrator. Dismissed.

Smith, Ann, estate of. Sarah Gee, administratrix. Dismissed.

Sukaireck, Mary, estate of. Annie S. Saliba, executrix. Dismissed.

Sweeney, Eugene, estate of. Timothy A. Sweeney, administrator. Dismissed.

Tansey, Elsie O., estate of. Thomas H. Tansey, administrator. Decree.

Wainstain, Samuel, estate of. Benjamin Wainstain *et al.*, administrators. Dismissed.

Westwood, Charles E., estate of. Georgianna Westwood, administratrix. Dismissed.

Wood, William H., estate of. Minnie V. Wood, administratrix. Dismissed.

Hampden County.

Bonelli, Arcangelo, estate of. Maria A. Bonelli, administratrix. Dismissed.

Circosta, James, estate of. Salvatore Pagliaro, administrator. Dismissed.

Clark, Edward W., estate of. Nettie B. Clark, administratrix. Dismissed.

De Giacomo, Alfonso, estate of. Gaetano Poccardi, administrator. Pending.

Fee, Patrick C., estate of. Anna E. Fee, administratrix. Unable to locate. Dismissed without prejudice.

Kneil, Mary A., estate of. Arthur S. Kneil, administrator. Dismissed.

Lipscomb, Frank, estate of. Margaret H. Shean, administratrix. Dismissed.

Melaszansky, Joseph, estate of. Ursula J. Melaszansky, administratrix. Pending.

Osborn, Martin, estate of. Susan M. Osborn, executrix. Dismissed.

Ostiguy, Marie Papineau, estate of. Clarisse Papineau Parent, executrix. Pending.

Rooney, John, estate of. Margaret Rooney, administratrix. Pending.

Sullivan, Edward W., estate of. Jennie G. Sullivan, administrator. Dismissed.

Wright, Henry A., estate of. Cynthia A. Wright, administratrix. Dismissed.

Middlesex County.

Brouillette, Joseph P., estate of. Esmeralda M. Brouillette, administratrix. Pending.

Buckley, Alice T., estate of. Thomas W. Buckley, administrator. Dismissed.

Burke, Christopher, estate of. Elizabeth Burke, administratrix. Dismissed.

Cahill, Elizabeth, estate of. Mary A. Kahn, administratrix. Pending.

Cavanagh, Susan E., estate of. Susan F. Cavanagh, administratrix. Dismissed.

Chadbourne, Marshall W., estate of. Addie Chadbourne, executrix. Pending.

Corlew, Rollin H., estate of. Caroline A. Henderson, executrix. Dismissed.

Dean, William H., estate of. Margaret E. Dean, administratrix. Dismissed.

Dixon, Adam, estate of. Joseph K. Dixon, administrator. Dismissed.

Drago, Carmel, estate of. John Drago, administrator. Unable to locate.

Fenton, Timothy, estate of. Mary Fenton, administratrix. Dismissed.

Fish, Philip, estate of. Mary A. Fish, administratrix. Decree.

Fletcher, Mary J., estate of. Nancy M. Fletcher, executrix. Pending.

Frotton, Peter E., estate of. Frank H. Frotton, administrator. Pending.

Grady, Mary, estate of. John E. Grady, executor. Dismissed.

Hall, Elvira A., estate of. Michael J. McDevitt, administrator. Unable to locate. Dismissed without prejudice.

Homer, Elizabeth M., estate of. George H. Homer, administrator. Dismissed.

Kadra, Sadie M., estate of. Mallham M. Kadra, administrator. Dismissed.

Mann, Charles W., estate of. Arthur W. Mann, administrator.
Dismissed.

McCollester, John Q. A., estate of. John F. McCollester, administrator. Dismissed.

Morris, Letitia, estate of. Edith R. Tibbetts, executrix. Dismissed.

Neal, William T., estate of. Bridget G. Neal, executrix. Dismissed.

Nichols, Bessie M., estate of. George H. Nichols, administrator. Dismissed.

Noel, Edward, estate of. Celina M. Noel, administratrix. Dismissed.

Pierlot, Annie F., estate of. Agnes J. Pierlot, administratrix. Pending.

Quinlan, Johanna, estate of. Margaret T. Scannell, executrix. Dismissed.

Quinn, Albert T., estate of. Salter W. Quinn, administrator. Dismissed.

Riggs, Lucy J., estate of. Blanche I. Riggs, executrix. Dismissed.

Roche, John J., estate of. Timothy J. Roche, administrator. Dismissed.

Rogers, Mary J., estate of. Annie Rogers, administratrix. Dismissed.

Russo, Maria, estate of. Maria Marazzo, administratrix. Dismissed.

Sheehan, Patrick J., estate of. Hannah Sheehan, administratrix. Dismissed.

Slye, William J., estate of. Mary A. Slye, administratrix. Dismissed.

Sullivan, John, estate of. Alice F. Sullivan, executrix. Dismissed.

Norfolk County.

Carter, Helen E., estate of. Hallock H. Hill, administrator. Dismissed.

Cleale, Edna C., estate of. Ernest L. Hill, administrator. Dismissed.

Coupal, Denise, estate of. Joseph Coupal, administrator. Dismissed.

Doble, Enoch H., estate of. Herbert F. Doble, special administrator. Dismissed.

Farnsworth, John L., estate of. Anna A. Farnsworth, administratrix. Dismissed.

- Ford, Catherine, estate of. Martin J. Lee, administrator. Dismissed.
- Gallivan, Elizabeth, estate of. John L. Gallivan, administrator. Disposed of.
- Garrity, Margaret T., estate of. Maria A. Garrity, executrix. Dismissed.
- Kelley, Ruth, estate of. Charles T. Kelley, administrator. Final decree.
- McDonnell, John A., estate of. Mary G. McDonnell, executrix. Dismissed.
- McGillicuddy, Ellen, estate of. Eugene H. McGillicuddy, administrator. Dismissed.
- McPherson, Mary A., estate of. Duncan McPherson, administrator. Pending.
- Moran, James F., estate of. Timothy Dolan, administrator. Dismissed.
- Sheehan, Ellen, estate of. John J. Sheehan, administrator. Dismissed.
- Yates, Joseph, estate of. Lorretto A. Yates, executrix. Dismissed.

Plymouth County.

- Danahy, Abby, estate of. James E. Handrahan, executor. Dismissed.
- Donovan, Julia, estate of. Hannah A. Shea, executrix. Dismissed.
- Fish, Mary A., estate of. Florene A. Haskell, administratrix. Dismissed.
- Hickey, Catherine T., estate of. Margaret A. Hickey, administratrix. Dismissed.
- Lowry, Ann, estate of. Isabelle Crehan, administratrix. Final decree.
- Poole, Bradford, estate of. Ella F. Poole, administratrix. Dismissed.
- Riley, Patrick, estate of. Bridget Riley, administratrix. Dismissed.
- Russell, Patrick, estate of. William J. Coughlan *et al.*, executors. Dismissed.
- Terry, Naomi, estate of. Sarah R. Collins, administratrix. Dismissed.

Suffolk County.

- Adolph, Joseph, estate of. Isaac Klein, administrator. Pending.
- Ahearn, Maurice, estate of. Mary E. Ahearn, administratrix. Dismissed.
- Allen, William A., estate of. Marion Boyd Allen, administratrix. Dismissed.
- Almeida, Christiano F., estate of. Angelina F. Almeida, administratrix. Pending.
- Baxter, Albert, estate of. Elizabeth A. Baxter, administratrix. Pending.
- Becker, Philip, estate of. Bridget Becker, executrix. Dismissed.
- Belanger, J. P. Paul, estate of. Marie Belanger, administratrix. Dismissed.
- Bershinsky, John, estate of. Lihba Bershinsky, administratrix. Pending.
- Brehm, Charles W., estate of. Estella F. Brehm, administratrix. Pending.
- Brooks, Charles A., estate of. Mary J. Brooks, executrix. Dismissed.
- Byrne, William R., estate of. Catherine M. Byrne, administratrix. Pending.
- Chaplin, Matilda C., estate of. Samuel Chaplin, administrator. Pending.
- Clayton, Frank H., estate of. Minnie A. Clayton, executrix. Dismissed.
- Costello, Bridget, estate of. Bridget A. Costello, administratrix. Dismissed.
- Cote, Omer, estate of. Rose Cote, administratrix. Unable to locate. Dismissed without prejudice.
- Coughlin, Martha A., estate of. Timothy F. Callahan, administrator. Dismissed.
- Daly, Michael, estate of. Ellen E. Murray, administratrix. Pending.
- De Ieso, Nicola, estate of. Cleonice De Ieso, administratrix. Dismissed.
- Donovan, Patrick, estate of. Margaret Donovan, administratrix. Pending.
- Driscoll, John J., estate of. Catherine Driscoll, administratrix. Dismissed.

- Ehrenberg, Judah, estate of. Rachel Lea Ehrenberg, administratrix. Dismissed.
- Gerrish, Jennie L., estate of. Herbert W. Angier, administrator. Dismissed.
- Gleason, Michael J., estate of. Annie Gleason, administratrix. Dismissed.
- Goodale, George L., estate of. William P. Martin, executor. Dismissed without prejudice.
- Gray, James N., estate of. Helen F. Eaton, administratrix. Unable to locate. Dismissed without prejudice.
- Gray, Mary D., estate of. William P. Gray, administrator. Dismissed.
- Griffith, Edward, estate of. George A. Griffith, administrator. Dismissed.
- Hall, Ellen F., estate of. Kate S. Gallagher, executrix. Dismissed.
- Hanson, Mary N., estate of. Andrew Hanson, administrator. Dismissed.
- Hardy, Lylie M., estate of. Lucy B. Hoadley, administratrix. Dismissed.
- Harrington, Mary, estate of. Joseph A. Sheehan, administrator. Final decree.
- Hunt, William P., estate of. John C. Hunt, administrator. Dismissed.
- Jame, Rebecca, estate of. Barnet Jame, administrator. Unable to locate. Dismissed without prejudice.
- Jordan, Lena, estate of. Frida Jordan, administratrix. Unable to locate. Dismissed without prejudice.
- Kalis, Abraham, estate of. Joseph Kalis, administrator. Unable to locate. Dismissed without prejudice.
- Kelly, Anna, estate of. Sarah Kelly, administratrix. Dismissed.
- Kenney, Martin, estate of. James J. Kenney, administrator. Dismissed.
- Killeen, Daniel J., estate of. John B. Killeen, administrator. Pending.
- King, James T., estate of. Augusta King, administrator. Pending.
- Londregan, Catherine, estate of. Richard J. Hayden, executor. Dismissed.
- Lynch, Mary, estate of. John H. Lynch, executor. Dismissed.

- Lynn, Gertrude, estate of. John J. Lynn, administrator. Dismissed.
- Lyons, Maria, estate of. Charles F. Lyons, administrator. Pending.
- Madden, Stephen F., estate of. Delia A. Madden, administratrix. Dismissed.
- McGann, Patrick, estate of. Margaret Sheehan, administratrix. Dismissed.
- McHale, John F., estate of. Annie J. McHale, administratrix. Pending.
- Murphy, John E., estate of. Thomas Murphy, administrator. Dismissed.
- Oakman, Lizzie R., estate of. Elmer P. Oakman, administrator. Dismissed.
- O'Brien, Jeremiah, estate of. George E. Hollfelder, administrator. Dismissed.
- O'Farrell, Mary M., estate of. John D. Carmody, executor. Pending.
- O'Neil, John H., estate of. Elizabeth F. O'Neil, administratrix. Dismissed.
- Ormsby, Anna, estate of. Henry S. Ormsby, administrator. Dismissed.
- Pare, Cyrille, estate of. Georgianna Pare, administratrix. Dismissed.
- Percival, Rose B., estate of. Rosella A. Lynch, administratrix. Dismissed.
- Schaeff, Nannette, estate of. Henry Robinson, executor. Dismissed.
- Shannon, Helen, estate of. Harry W. James, administrator. Dismissed.
- Sharkey, Charles, estate of. George L. Sharkey, administrator. Dismissed.
- Silberg, Joseph, estate of. Samuel Silberg, administrator. Pending.
- Sinclair, Albert T., estate of. Curtis H. Waterman, executor. Dismissed.
- Singleton, Catherine, estate of. John J. Singleton, administrator. Unable to locate. Dismissed without prejudice.
- Sirvain, Marcelin, estate of. Aglar Sirvain, executor. Pending.
- Solari, Agostino, estate of. Maria Solari *et al.*, executors. Dismissed.

- Sribikr, Longina, estate of. Anastasia Sribikr, administratrix. Unable to locate. Dismissed without prejudice.
- Staloff, Louis, estate of. Lena Staloff, administratrix. Dismissed.
- Sullivan, Daniel, estate of. William T. Sullivan, administrator. Dismissed.
- Sullivan, Daniel J., estate of. Annie T. Sullivan, executrix. Pending.
- Sullivan, Julia, estate of. Hannah Sullivan *et al.*, administrators. Dismissed.
- Taylor, Mary A., estate of. Robert Taylor, administrator. Dismissed.
- Thorner, Elmina, estate of. Morris Thorner, administrator. Dismissed.
- Tobey, Horace, estate of. Mary E. Tobey, administratrix. Dismissed.
- Tortorella, Francesca, estate of. Ignazio Tortorella, administrator. Pending.
- Trainor, Kate, estate of. Annie L. O'Brien, administratrix. Dismissed.
- Tramontozzi, Constanzo, estate of. Charles A. Castle, administrator. Dismissed.
- Trengove, William E., estate of. Charles T. Trengove, administrator. Dismissed.
- Vincent, Alexander, estate of. William Vincent, administrator. Dismissed without prejudice.
- Vining, Ida L., estate of. Louis B. Vining, executor. Dismissed.
- Wagner, Stephen G., estate of. Mary A. Wagner, administratrix. Unable to locate. Dismissed without prejudice.
- Walenszius, Anthoney, estate of. Katorina Walenszius, administratrix. Pending.
- Ware, Agnes B., estate of. Clara E. Brown, administratrix. Dismissed.
- Warshansky, Samuel, estate of. Fannie Warshansky, administratrix. Decree.
- Wheelock, Oscar M., estate of. Winnifred I. Wheelock, administratrix. Dismissed.
- Williams, Michael, estate of. Katreine Williams, administratrix. Dismissed.
- Williams, Sarah M., estate of. John H. Williams, administrator. Dismissed without prejudice.

Whiting, Elizabeth L., estate of. Edward L. Goodwin, administrator. Dismissed.

Whittemore, Franklin P., estate of. Margaret E. Reed, administratrix. Dismissed.

Wren, Cornelius, estate of. Edward C. Wren, administrator. Unable to locate. Dismissed without prejudice.

Worcester County.

Curran, John J., estate of. Peter F. Curran, administrator. Pending.

Delorme, Narcisse D., estate of. George Delorme *et als.*, executors. Dismissed.

Donoghue, John C., estate of. Charles F. Campbell, administrator. Dismissed.

Dorsey, Catherine, estate of. Timothy Dorsey, administrator. Dismissed.

Dufault, Louise M., estate of. Marie L. Dufault, administratrix. Dismissed.

Fox, Patrick, estate of. Mary Fox, executrix. Dismissed.

Gargulinski, Ignacy, estate of. Aniela Gargulinski, administratrix. Final decree.

Groeziuger, Charles G., estate of. Charles F. Groeziuger, administrator. Pending.

Hill, Catherine, estate of. Thomas J. Hill, administrator. Dismissed.

Hudson, Ellen A., estate of. Jennie A. Kelsey, administratrix. Dismissed.

Jurentkuff, Charles L., estate of. Bernice R. Jurentkuff, administratrix. Dismissed.

Murphy, Patrick J., estate of. Wm. J. B. Murphy, administrator. Dismissed.

Sawyer, Warren E., estate of. Willie L. Sawyer, administrator. Decree.

Steiman, David, estate of. Louis Steiman, administrator. Unable to locate. Dismissed without prejudice.

Sullivan, Catherine, estate of. Patrick O'Leary, administrator. Dismissed.

Willard, George, estate of. Frank D. Willard, administrator. Decree.

PUBLIC CHARITABLE TRUSTS.

Berkshire County.

- Lenox Library Association *v.* David Lydig *et als.* Bill of complaint brought to confirm trust deeds. Pending.
- Newton, Maria H., estate of. A. Chalkley Collins, administrator, petitioner. Petition for instructions. Pending.

Bristol County.

- Delano, Edward, estate of. Fairhaven Benevolent Association, petitioner. Petition for appointment as trustee. Attorney-General waived right to be heard.
- Lothrop, Cyrus, estate of. Oliver Ames *et al.*, executors. Petition for authority to transfer trust funds. Disposed of.
- Matthes, Cornelia P., estate of. Charles R. Hunt, administrator. Petition for instructions. Decree.
- Matthes, Cornelia P., estate of. Charles R. Hunt, administrator. Petition for instructions. Decree.
- Winsor, Ellen A., estate of. Attleborough Hospital, petitioner. Petition for appointment as trustee. Attorney-General waived right to be heard.

Essex County.

- Andover Theological Seminary, trustees of, *v.* Attorney-General. Petition for instructions. Decree.
- Atwood, Margaret, estate of. Henry B. Little *et als.*, petitioners. Petition for appointment of petitioners as trustees. Pending.
- Barr, Henry, estate of. Salem Young Men's Christian Association, petitioner. Petition for leave to apply the doctrine of *cy-pres* to trust fund. Disposed of.
- Essex Agricultural Society *v.* Massachusetts General Hospital Corporation and the Attorney-General. Petition to sell real estate and to apply the doctrine of *cy-pres*. Service

accepted. Petition dismissed. Petitioner appealed. Pending.

Essex Institute, petitioner. Petition for instructions. Decree.

Haskins, Leander M., estate of. Grafton Butman, petitioner. Petition for appointment of trustee. Pending.

Hawkes, Mary B., estate of. Arthur F. Upton, executor, petitioner. Petition for instructions. Disposed of.

Hawks, Esther H., estate of. Hannah T. Carret *et al.*, trustees, petitioners. Petition for leave to adjust certain claims by compromise. Attorney-General waived right to be heard.

Hawks, Esther H., estate of. Philip W. Ayres *et al.*, trustees, petitioners. Petition for allowance of third and fourth accounts. Attorney-General waived right to be heard.

Hawks, Esther H., estate of. Alfred E. Chase, petitioner. Petition for appointment as trustee. Attorney-General waived right to be heard.

Healy, Jeremiah J., estate of. Dennis Healy, executor. Petition for instructions. Pending.

Needham, Alice, estate of. Overseers of Salem Monthly Meeting of Friends, petitioner. Petition for instructions. Decree.

Otis, Margaret Sigourney, estate of. Philip Dexter *et al.*, executors. Petition for instructions. Pending.

Robbins, Mary B., estate of. Charles E. Sawyer, trustee. Petition for instructions. Pending.

Smith, John, estate of. J. Duke Smith, trustee. Petition for instructions. Pending.

Franklin County.

Durkee, Lauriston C., estate of. William G. Packard *et al.*, trustees, petitioners. Petition for leave to mortgage real estate. Attorney-General assented to the petition.

Field, Simeon A., estate of. Henry W. Montague, trustee. Petition for allowance of third account. Pending.

Hamilton, Kate E., estate of. Darwin F. Hamilton, administrator, petitioner. Petition for instructions. Disposed of.

Stratton, Abigail, estate of. Frank H. Montague *et al.*, trustees. Petition for allowance of tenth account. Pending.

Williams, Ebenezer Hinsdale, estate of. Irving H. Childs, petitioner. Petition for instructions. Disposed of.

Hampden County.

- Allen, Ethan, estate of. Springfield Safe Deposit and Trust Company, trustee, petitioner. Petition for allowance of third account. Pending.
- Smith, David P., estate of. Edward H. Lathrop *et al.*, petitioners. Petition for appointment of managers of trust fund. Attorney-General waived right to be heard.
- Smith, David P., estate of. City of Springfield *et als.*, petitioners. Petition for instructions. Disposed of.

Hampshire County.

- Dickson, Sarah, estate of. Henry S. Pease, town clerk and treasurer of the town of Middlefield, petitioner. Petition for authority to apply the doctrine of *cy-pres*. Attorney-General waived right to be heard.
- Gaylord, George H., petitioner. Petition for termination of trust fund created for Russell Society. Dismissed.
- Moore, Philomela C., estate of. Herbert Sabin *et al.*, petitioners. Petition for instructions. Decree.
- Russell Church in Hadley. Francis S. Reynolds, trustee. Petition for instructions. Pending.

Middlesex County.

- Abbott, Carrie F., estate of. Winthrop P. Stone, executor, petitioner. Petition for instructions. Disposed of.
- Badger, Mary E., estate of. George G. Averill, executor and trustee, *v.* Charles W. Badger *et als.* Petition for authority to adjust by compromise controversy in regard to will. Disposed of.
- Belknap, Harriett E., estate of. George E. Horr, petitioner. Petition for appointment as trustee. Attorney-General waived right to be heard.
- Bennett, Eleanor, estate of. Joseph Jaquith *et als.*, petitioners. Petition for appointment of trustees. Decree.
- Blood, Benjamin F., estate of. George G. Waite *et al.*, petitioners. Petition for appointment as trustees. Attorney-General waived right to be heard.
- Bugbee, Samuel W., *et al. v.* Attorney-General. Petition for instructions. Pending.
- Bull, Sara C., estate of. Joseph G. Thorp *et al. v.* John Lund *et al.* Petition for instructions. Pending.

- Copeland, Sarah E., estate of. Alba A. Giles, executor. Petition for instructions. Decree.
- Copeland, Sarah E., estate of. Alba A. Giles, executor. Petition for allowance of second account. Pending.
- Hammond, George P., estate of. Elizabeth F. Johnson, executrix, petitioner. Petition for instructions. Pending.
- Hopkins, Lucretia A., estate of. James A. Bancroft, executor, petitioner. Petition for instructions. Pending.
- Litchfield, William, estate of. Henry W. Bragg, administrator. Petition for instructions. Rescript.
- Martin, Webster Warner, estate of. Wesley T. Lee *et al.*, trustees. Petition for allowance of eighth account. Attorney-General waived right to be heard.
- Mellen, William H., estate of. Town of Framingham, petitioner. Petition for authority to sell real estate. Pending.
- Roberts, James H., estate of. Horace M. Bickford *et al.*, trustees, petitioners. Petition for leave to expend part of trust fund. Attorney-General waived right to be heard.
- Shepard, Obed C., estate of. Charles H. Sherman, executor. Petition for leave to adjust by compromise controversy in regard to allowance of will. Rescript.
- Tabor, Frances F., estate of. Charles S. Norris, executor. Petition for instructions. Reserved for full court.
- Thompson, Emulus, estate of. Melvin G. Rogers, administrator. Petition for instructions. Pending.
- Ward, Winthrop, estate of. Francis H. Brown *et als.*, petitioners. Petition for appointment of trustees. Decree.
- White, Daniel, estate of. Winslow Warren *et al.*, trustees. Petition for allowance of sixteenth, seventeenth and eighteenth accounts. Pending.
- Whitney, Caroline A. R., estate of. Henry R. Hayes, administrator. Petition for allowance of third and final account. Attorney-General waived right to be heard.
- Whitney, Caroline A. R., estate of. Charles A. Stone *et al.*, trustees. Petition for allowance of second account. Attorney-General waived right to be heard.
- Whitney, Edward, estate of. Charles A. Stone *et al.*, trustees. Petition for instructions. Decree.

Nantucket County.

- Enas, Sally Maria, estate of. Lauriston Bunker, trustee, petitioner. Petition for allowance of first account. Pending.

Norfolk County.

- Capen, Elizabeth Fuller, estate of. Eben W. Keyes *et al.*, executors. Petition for instructions. Disposed of.
- Lee, Henry, estate of. Schuyler S. Bartlett, executor, petitioner. Petition for instructions. Pending.
- Mann, Jonathan, estate of. John F. Brown *et al.*, executors. Petition for instructions. Final decree.
- Mann, Jonathan, estate of. Carrie S. Leeds, petitioner. Petition for removal of trustee. Pending.
- Medfield Ministerial Fund, Trustees of, *v.* Attorney-General. Petition for instructions. Disposed of.
- Sanderson, Julia A., estate of. Marshall L. Perrin, executor. Petition for instructions. Decree.
- Sanderson, Julia A., estate of. Marshall L. Perrin, executor. Petition for authority to purchase an annuity for H. H. Brown. Decree.
- Wolcott, Harriet Frothingham, estate of. Philip Dexter *et al.*, trustees. Petition for authority to transfer trust funds. Disposed of.

Plymouth County.

- Pitcher, James S. H., estate of. Oliver W. Cobb, trustee. Petition for distribution of trust estate. Decree.

Suffolk County.

- Agassiz, Alexander, estate of. Robert W. Hill, petitioner. Petition for appointment as trustee. Attorney-General waived right to be heard.
- Agassiz, Alexander, estate of. Robert W. Hill, trustee. Petition for allowance of first and final account. Attorney-General waived right to be heard.
- Amory, Francis I., *et al. v.* Trustees of Amherst College *et al.* Petition for instructions. Pending.
- Ashton, Elisha V., estate of. Charles P. Curtis *et al.*, trustees. Petition for allowance of fifth to eleventh accounts, inclusive. Accounts allowed.
- Atkins, Henry Holly. William Warren Vaughn *et al.*, trustees. Petition for allowance of seventh to tenth accounts, inclusive. Attorney-General waived right to be heard.
- Boston Dispensary, petitioner. Petition for leave to sell real estate. Disposed of.

- Bradstreet, Charlotte A., estate of. Moses Williams *et al.*, petitioners. Petition for appointment as trustees. Decree.
- Brigham, Robert B., estate of. The New England Trust Company, trustee. Petition for allowance of first and second accounts. Attorney-General waived right to be heard.
- Brown, Josiah W., estate of. Sewall F. Abbott *et al.*, trustees. Petitions for instructions. Pending.
- Cazenove, Sarah Elizabeth, estate of. George H. Richards, trustee. Petition for instructions. Decree.
- Cazenove, Sarah Elizabeth, estate of. George H. Richards, trustee, petitioner. Petition for leave to convey real estate. Decree.
- Cushing, Henriette J., estate of. Constance J. Bessey, executrix. Petition for instructions. Pending.
- Dodge, Theodore A., estate of. Caroline Donaldson *et al.*, petitioners. Petition for appointment as trustees. Attorney-General waived right to be heard.
- Drury, Michael, estate of. Charles E. Cotting, trustee. Petition for allowance of first to seventh and final accounts, inclusive. Accounts allowed.
- Geyer, Mary French, estate of. George H. Cary, trustee, petitioner. Petition for allowance of first account. Attorney-General waived right to be heard.
- Gurney, Elizabeth F., estate of. Warren Avenue Baptist Church *v.* Attorney-General. Petition for instructions. Pending.
- Harris, George W., estate of. Edward J. Moriarty, petitioner. Petition for appointment as trustee. Attorney-General waived right to be heard.
- Harvard College, President and Fellows of, *v.* Attorney-General. Petition for authority to sell real estate. Disposed of.
- Hawks, Esther H., estate of. Hannah T. Carret *et al.*, trustees, petitioners. Petition for authority to convey trust estate. Decree.
- Haven, George, estate of. Herbert Parker *et al.*, trustees. Petition for instructions. Final decree.
- Healy, Anna M., estate of. William Ropes Trask, executor, petitioner. Petition for instructions. Pending.
- Hoffman, Florence R., estate of. Oscar B. Mowry *et als.*, trustees, petitioners. Petition for allowance of twelfth and thirteenth and final accounts. Attorney-General waived right to be heard.

- Jackson, James, estate of. Frederick C. Bowditch, trustee, petitioner. Petition for allowance of first account. Attorney-General waived right to be heard.
- Jackson, James, estate of. Frederick C. Bowditch, trustee, petitioner. Petition for leave to sell personal estate belonging to trust fund. Attorney-General waived right to be heard.
- Lawrence, Abbott, estate of. John Lawrence *et al.*, trustees, petitioners. Petition for allowance of twenty-second account. Attorney-General waived right to be heard.
- Leopold Morse Home for Infirm Hebrews and Orphans *v.* Home for Destitute Jewish Children, Inc. Petition for instructions. Decree.
- Lincoln, Annie Preston, estate of. J. Ellwood Lee Company *v.* The Grace Hospital. Petition brought by receivers to collect legacy under will. Pending.
- Liversidge, Thomas, estate of. Clift Rogers Clapp *et al.*, petitioners. Petition for appointment of Clarence B. Humphreys as trustee. Attorney-General assented to appointment.
- Locke, Elbridge W., estate of. Otis Merriam *et al.*, trustees, petitioners. Petition for allowance of ninth and tenth accounts. Attorney-General waived right to be heard.
- Mabie, William I., *et al.*, *v.* Edwin S. Gardner and Attorney-General. Petition for instructions regarding a public charitable trust under will of Mary Redding. Pending.
- Massachusetts Institute of Technology, petitioner. Petition for leave to sell real estate. Attorney-General waived right to be heard.
- Moore, Hollis, estate of. George E. Cornwall, trustee, petitioner. Petition for instructions. Disposed of.
- Norcross, Margaret P., estate of. Edith C. Reichardt, petitioner. Petition for appointment as trustee. Attorney-General waives right to be heard.
- Nute, Lewis W., estate of. John L. Newell and Thomas L. Wiles, petitioners. Petition for appointment as trustees. Attorney-General waived right to be heard.
- Patterson, Adoniram J., estate of. William N. Swain, trustee, petitioner. Petition for instructions. Disposed of.
- Patterson, Adoniram J., estate of. William N. Swain, trustee, petitioner. Petition for authority to sell real estate. Pending.

- Peterson, Ellen, estate of. Mary M. Anderson, petitioner. Petition for appointment of trustee. Pending.
- Pine, James A., estate of. Frank W. Grinnell, trustee. Petition for instructions. Decree.
- Potter, Sarah E., estate of. New Bedford Free Public Library, petitioner. Petition for instructions. Pending.
- Protestant Episcopal Church, Trustees of Donations for the, *v.* Attorney-General. Petition for leave to execute deed. Disposed of.
- Read, Charles C., *et al.*, *v.* The Frances E. Willard Settlement *et al.* Petition for instructions. Pending.
- Rust, Nancy E., estate of. Henry A. Wyman *et al.*, trustees. Petition for instructions. Decree.
- Saint Paul's Church in Boston, Wardens and Vestry of, *v.* Attorney-General. Bill in equity for authority to transfer trust funds held under the will of James Sullivan Warren and under the will of Edward Tuckerman. Disposed of.
- Saint Paul's Church in Boston, Proprietors of, *v.* Attorney-General. Bill in equity for authority to transfer trust funds held under the will of Elizabeth F. Harvey and under the gift from the estate of Mary S. Kettell. Disposed of.
- Saint Paul's Church in Boston, Wardens and Vestry of, *v.* Attorney-General. Bill in equity for authority to transfer trust funds held under the will of David Sears and under the will of Edward Tuckerman. Disposed of.
- Sawyer, Samuel E., estate of. Massachusetts Society for the Prevention of Cruelty to Animals, petitioner. Petition for authority to transfer trust estate. Attorney-General waived right to be heard.
- Smith, James, estate of. Willard N. Poland, petitioner. Petition for appointment of trustee. Pending.
- Smith, James, estate of. Samuel M. Jackson *et al.*, trustees. Petition for allowance of first and third accounts. Pending.
- Thompson, Thomas, estate of. John F. Moors, petitioner. Petition for appointment of trustee. Decree.
- Thorndike, George L., estate of. William A. Morrison *et al.*, trustees, petitioners. Petition for allowance of third and fourth accounts. Pending.
- Tyler Street Day Nursery Company *v.* Attorney-General. Petition for instructions. Decree.

- Wellesley Boys' Club, R. K. Sawyer *et als.*, trustees of, petitioners. Petition for instructions. Disposed of.
- Whitney, Sarah W., estate of. Charles A. Stone, trustee. Petition for leave to sell real estate. Pending.
- Wilder, Mary C., estate of. Charles H. Blodgett *et al.*, executors. Petition for instructions. Decree.
- Wilder, Mary C., estate of. Charles M. Blodgett *et al.*, executors. Petition for allowance of first, second, third and final accounts. Attorney-General waived right to be heard.
- Willard Hospital, The, *v.* The Frances E. Willard Settlement *et als.* Petition for instructions. Disposed of.
- Willard Hospital *v.* Frances E. Willard Settlement *et als.* Petition for instructions. Pending.

Worcester County.

- Abbott, Arminda P., estate of. Wheeler Poland, executor, petitioner. Petition for instructions. Disposed of.
- Bogle, Rosanna, estate of. Timothy H. Murphy, petitioner. Petition for appointment as trustee. Attorney-General waived right to be heard.
- Brooks, Sarah, estate of. Thomas H. Russell, petitioner. Petition for appointment as trustee. Pending.
- DeWitt, Alexander, estate of. First Congregational Church of Oxford, petitioner. Petition for leave to expend balance of trust fund. Decree.
- Fuller, Dana L., estate of. Louie C. Fuller, executrix. Petition for instructions. Pending.
- Grout, Eliza P., estate of. Robert L. Carter *et als.*, trustees. Petition for allowance of sixth account. Account allowed.
- Grout, Eliza P., estate of. Robert L. Carter *et als.*, trustees. Petition for allowance of seventh account. Attorney-General waived right to be heard.
- Merriam, Sybil A., estate of. Leominster Hospital Association, petitioner. Petition for authority to apply the doctrine of *cy-pres.* Disposed of.
- Murdock Fund, Trustees of, *v.* American Unitarian Association *et al.* Petition for instructions. Disposed of.
- Pierce, Ellen M., estate of. Joseph A. Lovering, administrator. Petition for instructions. Decree.
- Southgate, Isaac, estate of. Bertha Denny *et al.*, petitioners. Petition for appointment of Bertha Denny and Walter E.

Watson as trustees. Attorney-General waived right to be heard.

Stockwell, George K., estate of. Charles F. Stevens *et al.*, executors, petitioners. Petition for authority to adjust by compromise controversy in regard to will. Pending.

Whitin, John C., estate of. Edward Whitin *et al.*, petitioners. Petition for appointment of Arthur F. Whitin, Josiah M. Lasell and Chester W. Lasell as co-trustees. Attorney-General waived right to be heard.

Williams, Henry, estate of. Reason T. Lee *et als.*, trustees of the Bethel African Methodist Episcopal Church, petitioners. Petition for instructions. Pending.

Woodward, Angeline V., estate of. Horace A. Thissell, executor. Petition for appointment of Walter P. Bowers, John S. Scully and Wellington E. Parkhurst as trustees. Attorney-General waived right to be heard.

Worcester City Missionary Society *v.* Attorney-General. Petition for instructions. Disposed of.

SUITS CONDUCTED BY THE ATTORNEY-GENERAL

IN BEHALF OF STATE BOARDS AND COMMISSIONS.

The following cases have been reported to this department by State boards and commissions, to be conducted by the Attorney-General, or under his direction.

1. METROPOLITAN PARK COMMISSION.

Petitions to the Superior Court for assessment of damages alleged to have been sustained by the taking of land by the said commission.

Middlesex County.

Robinson, Sumner, *et al.* v. Commonwealth. Pending.

2. METROPOLITAN WATER AND SEWERAGE BOARD.

Petition to the Supreme Judicial and Superior Courts for assessment of damages alleged to have been sustained by the taking of land, and rights and easements in land, by said board.

Middlesex County.

Braman, Caroline R., v. Commonwealth. Pending.

Ward, George A., *et als.* v. Commonwealth. Pending.

Norfolk County.

Goddard, George A., v. Commonwealth. Settled.

Worcester County.

Allen, Byron D., v. Commonwealth. Pending.

Allen, Byron D., v. Commonwealth. Pending.

Bradley, Patrick, v. Commonwealth. Pending.

Cutting, Louis, administrator, v. Commonwealth. Pending.

Kendall, Sanford C., v. Commonwealth. Pending.

Keyes, Henry F., v. Commonwealth. Pending.

Knight, Asa E., v. Commonwealth. Pending.

Welch, James E., *v.* Commonwealth. Pending.
Wood, James H., *et al. v.* Commonwealth. Pending.
Wood, J. Frank, *et als. v.* Commonwealth. Pending.
Wood, J. Frank, *et als. v.* Commonwealth. Pending.

3. MASSACHUSETTS HIGHWAY COMMISSION.

Petitions to the Superior Court for a jury to assess damages alleged to have been sustained by the taking of land, or injury to land, by said commission. Under agreement with this Commonwealth most of these cases are defended by the various towns in which the land is situated.

Barnstable County.

Phillips, Martha B., *et al.*, trustees, *v.* Commonwealth. Pending.

Berkshire County.

Connelly, William H., *v.* Commonwealth. Pending.
Rogerson, Sophia, *v.* Commonwealth. Pending.
Stevens, John A., *et al. v.* Commonwealth. Pending.

Bristol County.

Cooper, Frederick P., *v.* Commonwealth. Pending.
Seabury, Phoebe W., *v.* Commonwealth. Pending.
Talbot, Joseph, *v.* Commonwealth. Dismissed.

Essex County.

Bishop, Emeline, *v.* Commonwealth. Pending.
Donovan, John, *v.* Commonwealth. Pending.
Perley, Osborne, *v.* Commonwealth. Pending.

Hampshire County.

Flagg, Lucretia Taft, *v.* Commonwealth. Pending.
Taft, Kate P., *v.* Commonwealth. Pending.

Middlesex County.

Nourse, Joseph P., *v.* Commonwealth. Pending.

Norfolk County.

Laycock, Berry, *v.* Commonwealth. Pending.
McLaughlin, Nancy M., *et al. v.* Commonwealth. Settled.

4. BOARD OF HARBOR AND LAND COMMISSIONERS.

Petitions to the Superior Court for assessment of damages alleged to have been sustained by the taking of land by said commissioners.

Suffolk County.

Butler, Philip H., *v.* Commonwealth. Pending.
East Boston Company *v.* Commonwealth. Pending.
Lamb, George, *et al. v.* Commonwealth. Pending.
Lamb, George, *et al. v.* Commonwealth. Pending.

5. CHARLES RIVER BASIN COMMISSIONERS.

Petitions to the Superior Court for assessment of damages alleged to have been sustained by the taking of land by said commissioners.

Suffolk County.

Apthorp, Octave L., *v.* Commonwealth. Pending.
Barstow, Catherine A., *v.* Commonwealth. Pending.
Brown, Rebecca W., *et al. v.* Commonwealth. Pending.
Cotting, Charles E., *et al., trustees, v.* Commonwealth. Pending.
Edmands, Katherine B., *v.* Commonwealth. Pending.
Fields, Annie, *v.* Commonwealth. Pending.
Hooper, James R., *v.* Commonwealth. Pending.
Hooper, Robert C., *et al. v.* Commonwealth. Pending.
Inches, Louise P., *v.* Commonwealth. Pending.
Jewell, Edward, *v.* Commonwealth. Pending.
Niles, Sarah F., *et al. v.* Commonwealth. Pending.
Parker, George W., *et al. v.* Commonwealth. Pending.
Pierce, Katherine C., *v.* Commonwealth. Pending.
Prince, Fannie L., *v.* Commonwealth. Pending.
Prince, Lillian C., *v.* Commonwealth. Pending.
Sears, Mary C., *v.* Commonwealth. Pending.
Sears, Richard D., *v.* Commonwealth. Pending.
Shaw, Francis, *v.* Commonwealth. Pending.
Tarbell, Arthur P., *et al. v.* Commonwealth. Pending.
Taylor, Georgianna O., *v.* Commonwealth. Pending.
Taylor, Mary M., *v.* Commonwealth. Pending.
Whitney, Christiana S., *et al. v.* Commonwealth. Pending.
Williams, John D., trustee, *v.* Commonwealth. Pending.

6. STATE BOARD OF INSANITY.

Petitions to the Superior Court for assessment of damages alleged to have been sustained by the taking of land by the said board.

Suffolk County.

Beatty, John F., *v.* Commonwealth. Pending.
Callahan, Frank J., *et al. v.* Commonwealth. Pending.
Callahan, George A., *et al. v.* Commonwealth. Pending.
Flint, James H., *et al.*, trustees, *v.* Commonwealth. Pending.
Holbrook, Wellington, *et al. v.* Commonwealth. Pending.
Kiley, Daniel J., *v.* Commonwealth. Pending.
Shea, Julia A., *et als.*, trustees, *v.* Commonwealth. Pending.

7. MOUNT EVERETT RESERVATION COMMISSION.

Berkshire County.

McNaughton, Elizabeth T., *v.* Commonwealth. Pending.

8. MISCELLANEOUS CASES FROM ABOVE COMMISSIONS.

Essex County.

Cilley, Orran G., *v.* Cattle Bureau. Petition to recover the value of cattle condemned by Cattle Bureau. Pending.
Reed, William H., *v.* Commonwealth. Claim for damages on account of injury to horse on State highway in Gloucester. Pending.
Tremblay, Paul, *v.* Commonwealth. Action of tort for injuries caused by defect in State highway in East Boston. Pending.

Middlesex County.

International Automobile and Vehicle Tire Company *v.* Commonwealth. Petition to recover damages caused by construction of bridge across Charles River under St. 1903, c. 391. Pending.
Whitney, Arthur E., *v.* Commonwealth. Bill in equity to enjoin the Commonwealth from filling in Abajona River in Winchester. Disposed of.

Suffolk County.

Davis, James A., *et al. v.* Commonwealth *et al.* Petition to recover for labor and materials used in construction of sewer. Pending.

- De las Casas, William B., *et al. v.* Sewer Commissioners of Revere. Petition for injunction to restrain town from obstructing sewer built by the Park Commission for bath house. Pending.
- Doherty, James, *v.* Edward W. Everson *et al.* and Metropolitan Water and Sewerage Board. Action of tort. Damages caused by blasting. Pending.
- Doherty, James, *v.* Commonwealth. Petition for assessment of damages caused by blasting for metropolitan sewer. Pending.
- Eastman, Charles Albert, *v.* Board of Registration in Medicine. Bill in equity to enjoin Board from revoking certificate. Pending.
- Ellinwood, Ralph R., Commonwealth *v.* Petition to restrain respondent from infringing park regulations on Revere boulevard. Pending.
- Franklin County Lumber Company *et al. v.* Commonwealth. Claim for money due under contract. Pending.
- G. M. Byrne Company *v.* Commonwealth. Suit for payment of money claimed to be due on contract. Settled.
- Gibbons, William H., *v.* Commonwealth. Damage caused by blasting in construction of metropolitan sewer. Pending.
- H. B. Smith Company *v.* Commonwealth. Claim for money due under contract for Boston State Hospital. Pending.
- Jenkins, Jennie L., *v.* Sumner Coolidge, M.D., superintendent of Lakeville State Hospital. Suit to enforce the provisions of written lease. Pending.
- Kinmon, John D., *v.* Commonwealth. Action of tort to recover for injuries caused by defect in State highway in Salisbury. Pending.
- Lake, Alexander G., *v.* Commonwealth. Action of tort to recover for injuries caused by defect in State highway in Natick. Pending.
- McGinniss, Margaret T., Commonwealth *v.* Bill in equity to restrain defendant from encroaching on land of the Commonwealth. Pending.
- National Contracting Company *et al.,* Commonwealth *v.* Action of contract to recover on bond. Pending.
- Niland, Michael, *v.* Commonwealth. Petition for assessment of damages caused by blasting for metropolitan sewer. Pending.

- Niland, Michael, *v.* Edward W. Everson *et al.* and Metropolitan Water and Sewerage Board. Action of tort. Damages caused by blasting. Pending.
- Normile, Francis, *v.* Commonwealth of Massachusetts *et al.* Petition for a jury to assess damages caused by construction of sewer in Roxbury. Pending.
- Normile, Francis, *v.* Edward W. Everson & Co. and Henry H. Sprague *et al.* Action of tort. Pending.
- Old Colony Construction Company, Commonwealth *v.* Action of contract to recover on bond. Pending.
- Pacific Surety Company *v.* Commonwealth *et al.* Petition to recover from McBride & Co. certain sums expended by petitioner. Pending.
- Smith, Frederick W., *et al. v.* Commonwealth. Claim for money due under contract for Boston State Hospital. Pending.
- Thomas, Herbert L., *v.* Commonwealth. Claim for money alleged to be due under contract with Massachusetts Highway Commission. Settled.
- Thomas, Lyman P., *v.* Commonwealth *et als.* Action to recover for labor and materials furnished in construction of State highway. Final decree.
- Waterproof Leatherboard Company, Henry H. Sprague *et als.*, Metropolitan Water and Sewerage Board, *v.* Bill of complaint to restrain respondent from discharging factory wastes into Beaver Dam Brook. Pending.

Worcester County.

- Lamb, Aroline M., *v.* Commonwealth. Petition to recover damages caused by change in grade of highway in Boylston. Pending.

9. STATE BOARDS OF CHARITY AND INSANITY.

Actions of contract pending in the Superior Court to recover charges for the support of persons in State hospitals.

Suffolk County.

- Chapin, Treasurer, *v.* Charles A. Mullin. Pending.
- Stevens, Treasurer, *v.* Franklin Balch. Settled.
- Stevens, Treasurer, *v.* Boston. Pending.
- Stevens, Treasurer, *v.* Boston. Pending.

- Stevens, Treasurer, *v.* Boston. Pending.
Stevens, Treasurer, *v.* Boston. Pending.
Stevens, Treasurer, *v.* Boston. Settled.
Stevens, Treasurer, *v.* Joseph C. Colligan. Pending.
Stevens, Treasurer, *v.* Bertie L. Dow. Pending.
Stevens, Treasurer, *v.* John Grieneeks. Pending.
Stevens, Treasurer, *v.* Michael Harper, guardian. Pending.
Stevens, Treasurer, *v.* Lowell. Pending.
Stevens, Treasurer, *v.* New Bedford. Pending.
Stevens, Treasurer, *v.* Quincy. Settled.
Stevens, Treasurer, *v.* Emma C. Russell, guardian. Pending.
Stevens, Treasurer, *v.* Josiah Ryder. Pending.
Stevens, Treasurer, *v.* Thomas J. Sexton, guardian. Pending.
Stevens, Treasurer, *v.* Stoneham. Settled.
Stevens, Treasurer, *v.* Stoughton. Settled.

MISCELLANEOUS CASES.

- A. C. Lawrence Leather Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- A. C. Lawrence Leather Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- A. H. Geuting Company *v.* Commonwealth. Petition for abatement of franchise tax for the year 1911. Final decree.
- A. H. Geuting Company *v.* Commonwealth. Petition for abatement of franchise tax for the year 1912. Final decree.
- Abington Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Acushnet Co-operative Bank. Augustus L. Thorndike, Bank Commissioner, petitioner. Petition for leave to accept offer of settlement made by directors. Final decree.
- Ahmeek Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Ahmeek Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Aldrich, Frank E., petitioner. Petition to register title to land in Northfield. Pending.
- Algolah Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Allain, Marguerite, administratrix of the estate of Maxime T. Allain, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Allouez Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Amalgamated Nevada Mines Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

- American Agricultural Chemical Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Axe & Tool Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Axe & Tool Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- American Bank Note Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- American Brass Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- American Can Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Can Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- American Chicle Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Chicle Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- American Dyewood Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Dyewood Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- American Glue Company *v.* Commonwealth. Petition for abatement of franchise tax for the year 1911. Final decree.
- American Glue Company *v.* Commonwealth. Petition for abatement of franchise tax for the year 1912. Final decree.
- American Hide and Leather Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Investment Securities Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

- American Investment Securities Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- American Locomotive Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Locomotive Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- American Pneumatic Service Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Radiator Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Radiator Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- American Seating Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Soda Fountain Company, Attorney-General *ex rel.* *v.* Dumping material into tide water. Pending.
- American Soda Fountain Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Soda Fountain Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- American Steel and Wire Company of New Jersey *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- American Steel and Wire Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Steel and Wire Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- American Sugar Refining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- American Thread Company of New Jersey *v.* Common--

- wealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Woolen Company *v.* Commonwealth. Petition to recover excise tax for the years 1909 and 1910 paid by foreign corporation. Pending.
- American Woolen Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Ames Shovel and Tool Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Amoskeag Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Amoskeag Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Anderson, Mary J., administratrix of the estate of Elizabeth P. Anderson, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Andover Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Androscoggin Mills, The, *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Androscoggin Mills, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Androscoggin Mills, The, *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Arizona Commercial Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Arlington Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Armstrong Cork Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Armstrong Cork Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Ashland Emery and Corundum Company *v.* Commonwealth.
Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Athol Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

Atlas Tack Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Attleborough Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.

Baltic Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending in the United States Supreme Court on writ of error.

Baltic Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Baltic Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Barre Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.

Bates Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

Bates Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Bedard, Joseph, *et als.* *v.* Attorney-General *ex rel.* Petition for use of the Attorney-General's name in an information in the nature of *quo warranto* to compel an accounting of funds contributed by the public for needy strikers. Use of name allowed.

Belding Bros. & Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Belding Brothers & Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Benjamin Franklin Savings Bank, Franklin, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

- Bent, Laurretta H., executrix of the will of Lucius P. Bent, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Decree.
- Berkshire County Savings Bank, Pittsfield, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Berry Brothers, Ltd. *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Bingham Mines Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Blake & Knowles Steam Pump Works *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Bleiler, Frederick, *v.* Commissioner of Animal Industry. Claim for damages for death of horse. Pending.
- Bohemia Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Boston & Northern Street Railway Company. Claim for amount expended in relaying water pipes in Washington Street, Lynn, destroyed by electric currents. Pending.
- Boston & Worcester Street Railway Company *v.* Board of Railroad Commissioners. Petition for modification of ruling by Railroad Commissioners. Pending.
- Boston Ice Company, petitioner. Petition to register title to land in Wakefield. Decree.
- Boston Penny Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Boston Securities Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Braintree Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Breakwater Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Brennan, James M., *v.* Charles E. Woodbury, Superintendent. Action of tort for personal injuries. Pending.

- Bridgewater Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Briggs, Benjamin F., *v.* Elmer A. Stevens, Treasurer and Receiver-General. Appeal from decree of Land Court. Pending.
- Brighton Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Bristol County Savings Bank, Taunton, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Broadway Savings Bank, Lawrence, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Brookline Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Brookside Mills *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Browne, Maud F., *v.* Charles T. Davis *et al.*, judges of the Land Court *et al.* Petition for writ of prohibition. Pending.
- Browning, King & Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Bryne, Andrew W., *et als. v.* Commonwealth *et al.* Petition to recover money in hands of Commonwealth. Pending.
- Buick Motor Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Burr, Arthur E., trustee, *v.* Commonwealth. Action to recover money held by Commonwealth, and belonging to H. P. Cummings Company. Settled.
- Bush, Samuel D., executor of the will of Martha E. Richmond, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Butler, Mary H., administratrix of the estate of Patrick Butler, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Decree.
- Calhoun, C. C., *v.* Commonwealth of Massachusetts. Claim for services in connection with Spanish war claims. Settled.

- Calumet & Hecla Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Cambridgeport Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Cambridge Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Canada, Atlantic & Plant Steamship Company Ltd. *v.* Commonwealth. Petition to recover excise taxes for the years 1905, 1906, 1907, 1908 and 1909 paid by foreign corporation. Pending.
- Cape Ann Savings Bank, Gloucester, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Cape Cod Five Cents Savings Bank, Harwich, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Centennial Copper Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Chamber of Commerce of the State of New York *v.* New York Central & Hudson River Railroad Company *et als.* Petition to intervene in differential rate cases. Pending.
- Champion Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Champion Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911. Paid by foreign corporation. Pending.
- Charles H. Schieren Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Charlestown Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Chase, Stephen A., *et al.* *v.* Adam H. Dickey *et al.* Petition to compel conveyance of real estate. Rescript.
- Chattel Loan Company, E. Gerry Brown, Supervisor of Loan Agencies, *v.* Bill in equity to enjoin defendant from charging rates of interest higher than ordered by plaintiff. Pending.

- Chelsea Savings Bank, Attorney-General *v.* Two petitions for withdrawal of deposits under St. 1908, c. 590, § 56. Decrees.
- Cheney Brothers *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Cheney Brothers *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Chicopee Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Childs' Dining Hall Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Childs, George C., administrator of the estate of Ann E. Newell, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Decree.
- Citizens Savings Bank, Fall River, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- City Five Cents Savings Bank, Haverhill, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- City Institution for Savings, Lowell, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Clinton Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Coblents, Salenda E., executrix of the will of Arthur A. Averille, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Columbian National Life Insurance Company *v.* Commonwealth. Petitions for abatement of franchise tax paid in 1903, 1904, 1905, 1906 and 1907. Pending.
- Commonwealth *v.* Boston. Action to recover money expended in changing grade of Bowdoin Street. Settled.
- Commonwealth *v.* New York, New Haven & Hartford Railroad Company. Action of tort for damage to property of Massachusetts Reformatory, caused by fire. Pending.
- Commonwealth *v.* Worcester. To recover for land taken from the Commonwealth. Pending.
- Consolidated Rendering Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

- Consolidation Coal Company *v.* Commonwealth. Petition to recover excise tax for year 1909 paid by foreign corporation. Pending.
- Consolidation Coal Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Consolidation Coal Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Continental Gin Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Continental Gin Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Copper Range Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Copper Range Consolidated Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Copper Range Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Crocker Institution for Savings, Turners Falls, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Cross, Grace E. Petition for habeas corpus. Petition dismissed by agreement.
- Cudahy Packing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Currier, John E., administrator of the estate of Caroline E. Currier, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Curtis Publishing Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Curtis Publishing Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Danvers Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.

- Davis Sewing Machine Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Dean, John J., *et al.*, executors of the will of Thomas H. Buckley, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Dedham Institution for Savings, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Dedham Institution for Savings, Attorney-General *v.* Petition for withdrawal of deposits under R. L., c. 113, § 55. Pending.
- Dennis, Edwin W., *et al. v.* Thomas P. Boyle *et als.*, Civil Service Commission. Petition for writ of mandamus. Petition dismissed.
- Dennison Manufacturing Company *v.* Commonwealth. Petition for abatement of franchise tax for the year 1911. Final decree.
- Dennison Manufacturing Company *v.* Commonwealth. Petition for abatement of franchise tax for the year 1912. Final decree.
- Dewey, Henry S., *v.* State Officers. Actions to replevy copies of notes of proceedings in the case of Dewey *v.* Good Government Association. Pending.
- Dolan, Arthur W., Register of Probate and Insolvency for the County of Suffolk, petitioner. Petition for authority to pay to the Treasurer and Receiver-General money deposited with said register to secure payment of fees. Pending.
- Donahue, Abbie A., executrix of the will of Abbie McDonald, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- E. H. Rollins & Sons *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- E. I. du Pont de Nemours Powder Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- E. I. du Pont de Nemours Powder Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Earl & Wilson *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

- East Boston Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- East Butte Copper Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- East Cambridge Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Edgerly, Frank H., *et al.* *v.* Cattle Bureau. Bill to recover for horse killed by order of Cattle Commissioner under R. L., c. 90. Pending.
- Edwards Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Edwards Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Eliot Five Cents Savings Bank, Boston, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Elm River Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Ennis, John D., *et al.*, administrators of the estate of Edmund Walsh, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Pending.
- Everett, Willard S., executor of the will of Elizabeth Davis, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Pending.
- Essex Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- F. Blumenthal Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Fairbanks Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Fairhaven Institution for Savings, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

- Fall River Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Fall River Gas Works Company *v.* Board of Gas and Electric Light Commissioners. Petition for certiorari. Reserved for full court.
- Fall River Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Farr Alpaca Company *v.* Commonwealth. Petition to recover franchise tax for the year 1911 paid by domestic corporation. Final decree.
- Field, John Q. A., executor of the will of Caroline Wood, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Fields, Annie, *v.* Charles River Basin Commission. Bill to enjoin Commonwealth from interfering with riparian rights on Charles River. Pending.
- Fifield, George W., executor of the will of Ruth S. Shaw, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Fleshman, Mary E., administratrix of the estate of Hannah D. Harrington, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Foss-Hughes Company *v.* Commonwealth. Petition for abatement of franchise tax. Pending.
- Fowler, Charles F., executor of the will of Eliza E. Crocker, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Foxborough Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Franklin Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Franklin Savings Bank of the City of Boston, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Franklin Savings Institution, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

- Fraternal Accident Association of America, Attorney-General *ex rel. v.* Information at the relation of the Insurance Commissioner for violation of insurance laws. Injunction issued and George Hoague appointed receiver.
- Frontenac Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Frontenac Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Galvin, Stephen P., administrator of the estate of Calvin R. Baker, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Gamewell Fire Alarm Telegraph Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Gardner Gas, Fuel and Light Company, Commonwealth *v.* Action to recover penalty on account of sulphuretted hydrogen in gas. Disposed of.
- General Baking Powder Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Georgia Home Insurance Company *v.* Commonwealth. Action to compel Treasurer and Receiver-General to return bond deposited with him by said company. Pending.
- Globe-Wernicke Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Gorton-Pew Fisheries Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Grant Nail and Supply Company, The, *v.* Commonwealth. Petition to recover franchise tax for the year 1911 paid by domestic corporation. Final decree.
- Grant, Robert, Judge of Probate, *v.* William W. Risk *et al.* Contract on bond as public administrator. Pending.
- Gratiot Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Gratiot Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

- Great Atlantic & Pacific Tea Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Great Barrington Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Great Western Cereal Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Greenfield Savings Bank *v.* Commonwealth. Petition to recover tax for 1910. Rescript.
- Greenfield Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Griffin Wheel Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Griffin Wheel Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- H. J. Heinz Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- H. J. Heinz Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- H. W. Johns-Manville Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Hampden Savings Bank, Springfield, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Harding, Herbert L., *et al.*, executors of the will of Sara L. Crockett, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Harrington, Charles C., executor of the will of Elizabeth A. Harrington, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Haverhill Gas Light Company, Attorney-General *v.* Information in equity to restrain respondent from transferring its franchises and property. Reserved for full court.
- Haverhill Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.

Hecker-Jones-Jewell Milling Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Henry F. Miller & Sons Piano Company *v.* Commonwealth. Petition for abatement of franchise tax for the year 1911. Final decree.

Henry K. Wampole & Company, Inc., *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Herbert, John, executor of the will of Edward T. Cowdrey, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Herwig, Mary. Petition for writ of habeas corpus. Dismissed.

Hickey-Riedman Company, Attorney-General *ex rel. v.* Bill in equity to enjoin defendant from discharging waste into Assabet River. Disposed of.

Holyoke Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

Home Savings Bank, Boston, Attorney-General *v.* Two petitions for withdrawal of deposits under St. 1908, c. 590, § 56. Decrees.

Hopkinton Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

Houghton Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Howes Brothers Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Howes Brothers Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Hudson Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

Hyde Park Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.

Institution for Savings in Newburyport, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.

Institution for Savings in Roxbury, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

International Automobile and Vehicle Tire Company *v.* Commonwealth. Petition for damages to petitioner's property caused by change of east branch of Charles River by Park Commission. Pending.

Isle Royale Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Jackson Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

Jackson Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

James Cunningham Son & Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Jenney, E. C., executor of the will of Maria P. Stark, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

John L. Whiting-J. J. Adams Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

John P. Squire Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

John P. Squire & Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Kenny, Thomas J., administrator *d. b. n.* of the estate of Joseph H. Horgan, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Keystone Watch Case Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Keystone Watch Case Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

King Philip Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

- Lake Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Lake Milling, Smelting and Refining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Lake Superior Smelting Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Lamont-Corliss Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Lanston Monotype Machine Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- LaSalle Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- LaSalle Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Laurium Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Lawrence Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Lee Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Lehigh Valley Coal Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Leland, Percy F., petitioner. Petition for registration of title to land in Ashland. Pending.
- Leland, Percy F., petitioner. Petition to register title to land in Natick. Attorney-General waived right to be heard.
- Leominster Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Lever Brothers Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

- Libby, George W., administrator of the estate of Oliver Libby, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Library Bureau *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Link-Belt Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Liquid Carbonic Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Little, George T., *et al.*, executors of the will of Rachel R. Thayer, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Locomobile Company of America, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Locomobile Company of America, The, *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Lombard, Walter E., *v.* Eugene N. Foss, Governor, Commander-in-Chief of the Massachusetts Volunteer Militia. Petition for writ of mandamus to compel the respondent to order a court of inquiry or court martial to investigate charges preferred against the petitioner. Petition dismissed.
- Lowell Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Lowell Institution for Savings, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Lyman, Charles E., *v.* Commissioners on Fisheries and Game. Petition for annulment of an order of said commissioners. Pending before full court. Rescript.
- Lynn Institution for Savings, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Mackey, Michael H., petitioner. Petition to register title to land in Dorchester. Attorney-General waived right to be heard.
- Mahar, Joseph P., executor of the will of Thomas J. Rehill, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

- Manchester, Abraham, executor of the will of Abraham E. Manchester, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Manitou Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Manitou Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Marlborough Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Martin L. Hall Company *v.* Commonwealth. Petition for abatement of franchise tax. Pending.
- Masonic Mutual Relief Association of Central Massachusetts, Attorney-General *ex rel. v.* Information at the relation of the Insurance Commissioner for violation of insurance laws. Injunction issued and Alfred S. Pinkerton appointed receiver.
- Massachusetts Catholic Order of Foresters *v.* Elmer A. Stevens, Treasurer and Receiver-General. Petition for writ of mandamus to compel respondent to deliver securities to petitioner. Pending.
- Massachusetts Consolidated Mining Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Mayflower Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- McCann, Charles J., *et al. v.* Charles Warren *et als.*, Civil Service Commissioners. Petition for writ of mandamus to compel certification of the petitioners' names by the Civil Service Commissioners. Decree. Appeal by petitioners.
- McDonald, Theodore H., Insurance Commissioner of Connecticut *v.* The Ætna Indemnity Company. Intervening petition of the Commonwealth of Massachusetts. Pending.
- McGuirk, Ann, executrix of the will of Terrence Farley, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- McIntire, Charles H., trustee under the will of Maria T. Clark, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

- Mead-Morrison Manufacturing Company *v.* Commonwealth.
Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Mechanics Savings Bank, Holyoke, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Mechanics Savings Bank, Lowell, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Metropolitan Life Insurance Company *v.* Commonwealth. Petition to recover excise taxes for the years 1909 and 1910 paid by foreign corporation. Pending.
- Michigan Smelting Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Middleborough, town of, Commonwealth *v.* Action to recover penalty on account of sulphuretted hydrogen in gas. Disposed of.
- Middlesex Institution for Savings, Concord, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Midvale Steel Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Milford Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Moore, Helen H., executrix of the will of George H. Moore, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Moore, William H., *et al.*, executors of the will of Edward W. Murray, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Morgan, Thomas, *et al.*, executors of the will of Martha Frankland, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Morse, Electra A., *et al. v.* David Ferguson *et al.* Action of tort. Pending.
- Murphy, James S., administrator c. t. a. of the estate of Charles H. Young, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Murphy, Mary E., executor of the will of Delia Martin, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

- Murphy, Michael, *v.* Harrie W. Pierce, Agent of the Commissioner of Animal Industry. Claim for damages for death of horse. Pending.
- N. K. Fairbank Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- N. K. Fairbank Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Nantucket Institution for Savings, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Nashua Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Nashua Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Natick Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- National Calfskin Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- National Calfskin Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- National Casket Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- National Contracting Company *v.* Commonwealth. Petition to recover under R. L., c. 201. Pending.
- New Bedford Five Cents Saving Bank, Attorney-General *v.* Five petitions for withdrawal of deposits under R. L., c. 113, § 55. Pending.
- New Bedford Five Cents Saving Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- New Bedford Institution for Savings, Attorney-General *v.* Two petitions for withdrawal of deposits under R. L., c. 113, § 55. Pending.

- New Bedford Institution for Savings, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Newburyport Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- New England Dressed Meat and Wool Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- New England Dressed Meat and Wool Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- New England Maple Syrup Company *v.* Henry P. Walcott *et als.* Bill in equity for an injunction. Pending.
- New York, New Haven & Hartford Railroad Company *v.* Commonwealth. Petition for abatement of franchise tax. Decree.
- Northampton Institution for Savings, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- North Easton Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- North End Savings Bank, Boston, Attorney-General *v.* Petition for withdrawal of deposits under R. L., c. 113, § 55. Pending.
- North End Savings Bank, Boston, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- North Packing and Provision Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- North Packing and Provision Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Northwestern Consolidated Milling Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- O'Connell, Joseph P., *v.* Commonwealth *et al.* Bill to recover money in hands of Commonwealth belonging to Austin Engineering and Construction Company. Disposed of.

- O'Donohue, Lillie B., executrix of the will of Joseph J. O'Donohue, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Ohls, Frederick W., *et al.*, State Board of Charity *v.* Action to recover on bond. Pending.
- Old Colony Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Old Colony Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Oliver Typewriter Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Oliver Typewriter Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Orange Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Osceola Consolidated Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Osman, Charles F., *v.* Commonwealth *et al.* Bill in equity to reach and apply funds in the hands of respondents. Decree.
- Oxford Linen Mills *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Parker, Galen A., executor of the will of Martha R. Temple, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Peoples Savings Bank, Worcester, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Pepperell Manufacturing Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Pepperell Manufacturing Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Pepperell Manufacturing Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

- Pillsbury Flour Mills Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Pocahontas Fuel Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Pope Manufacturing Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Porter, Rose M., *v.* Frank H. Hardison. Action of tort. Pending.
- Providence Ice Company *v.* Commonwealth. Petition to recover excise tax for the years 1910 and 1911 paid by foreign corporation. Pending.
- Providence Ice Company *v.* Commonwealth. Petition to recover excise tax for 1912 paid by foreign corporation. Pending.
- Provident Institution for Savings, Amesbury, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Plymouth Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Plymouth Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Quaker Oats Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Quincy, city of, Attorney-General *ex rel. v.* Petition to recover penalty for failure to instal water meters. Dismissed.
- Randall, George W., Attorney-General *v.* Petition for use of Attorney-General's name in an information in the nature of *quo warranto* to test the title to office of the assessors of the town of Plympton. Use of name refused.
- Regal Shoe Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Rice & Hutchins, Incorporated, *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Rice & Hutchins, Incorporated, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

- Richardson Silk Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Richardson Silk Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Ritchie, Christina, *v.* Treasurer and Receiver-General. Action of contract under R. L., c. 128, § 96. Pending.
- Rockland-Rockport Lime Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Royal Arcanum, Supreme Council of, *v.* Elmer A. Stevens, Treasurer and Receiver-General. Petition for mandamus to compel the Treasurer and Receiver-General to deliver securities deposited with him. Disposed of.
- Russell-Miller Milling Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- S. S. White Dental Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending in United States Supreme Court on writ of error.
- Salem Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Salem Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Salisbury Land and Improvement Company, petitioner. Petition for registration of land in Salisbury. Pending.
- Saxonville Mills, petitioner. Petition for registration of land in Framingham. Pending.
- Seager Engine Works *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Seamen's Savings Bank, Provincetown, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Seashipt Oyster System *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Seneca Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

- Shannon Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Shapleigh, Samuel B., executor of the will of Ellen L. Shapleigh, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Shelburne Falls Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Shepard & Morse Lumber Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Shepardson, Edgar A., *et als. v.* Railroad Commissioners. Petition for writ of *certiorari*. Petition discontinued as to Railroad Commissioners.
- Simpson, Frank E., petitioner. Petition for registration of title to land in Framingham. Attorney-General waived right to be heard.
- Skehill, Patrick J., administrator of the estate of John E. Skehill, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Smith & Dove Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- South Boston Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Southbridge Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- South Lake Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Springfield Breweries Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Springfield Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Springfield Institution for Savings, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

- Springfield Provision Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- St. Mary's Mineral Land Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Stafford Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Stetson, Emma F., administratrix c. t. a. of the estate of Albert Stetson, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Stone, Ann Elizabeth, Attorney-General *v.* Information for collection of inheritance tax. Pending.
- Stone, Frank Victor, Attorney-General *v.* Information for collection of inheritance tax. Pending.
- Stone, Stephen Stoddard, Attorney-General *v.* Information for collection of inheritance tax. Pending.
- Stoneham Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Stoughton Mills, Incorporated, Attorney-General *ex rel. v.* Bill in equity to enjoin defendant from discharging waste into Neponset River. Pending.
- Strosnider, John H., petitioner. Petition for writ of habeas corpus. Petition dismissed by agreement.
- Swift & Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Submarine Signal Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Suffolk Savings Bank, Boston, Attorney-General *v.* Two petitions for withdrawal of deposits under R. L., c. 113, § 55. Pending.
- Suffolk Savings Bank, Boston, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Sullivan, Joseph M., administrator of the estate of Willis F. Day, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Superior Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Swift & Co. *v.* Commonwealth. Petition to recover excise tax for the years 1910 and 1911 paid by foreign corporation. Pending.

Tamarack Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Tarbell, Arthur P., *v.* Boston Athletic Association *et al.* Bill in equity to enjoin defendant from building a boathouse on Charles River basin. Pending.

Taunton Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.

Templeton Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.

Tobey, William H., petitioner. Petition for registration of title to land in New Bedford. Claim on behalf of Commonwealth withdrawn.

Trimountain Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Turley, Thomas J., *et al.*, administrators of the estate of Mary Benson, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Union Copper Land and Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Union Institution for Savings, Boston, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.

Union Savings Bank, Fall River, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.

Union Square Methodist Episcopal Church, petitioner. Petition to register title to land in Charlestown. Pending.

United States Radiator Corporation *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

United States Worsted Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

United States Worsted Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

- Valvoline Oil Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Victoria Copper Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Victoria Copper Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912. Pending.
- Vining, Floretta, executrix of the will of Elizabeth Jacobs, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- W. L. Douglas Shoe Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Wakefield Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Walcott, Etta R., administratrix of the estate of Etta Walcott, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Dismissed.
- Walen, William W., administrator of the estate of Almira C. Walen, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Walpole Rubber Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Walpole Rubber Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Waltham Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Waltham Watch Company *v.* Commonwealth. Action to recover corporation tax for 1908. Pending.
- Walton, John E., executor of the will of Delia Walton, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Ward-Corby Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Wareham Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Warren Brothers Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

- Warren Five Cents Savings Bank, Peabody, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Warren Institution for Savings, Boston, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Webster Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Welch, Mary Ann, executrix of the will of Thomas Welch, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Welch, William J., *v.* John A. Campbell. Action of tort. Pending.
- Welch, William J., *v.* Hosea M. Quimby, superintendent. Action of tort. Pending.
- Wellfleet Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Welsbach Street Lighting Company of America *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Welsh, Willard, petitioner. Petition to register title to land in Wakefield. Attorney-General waived right to be heard.
- Westborough Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Westfield Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Westinghouse, Church, Kerr & Co. *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Weymouth Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Whitaker, Elbridge J., executor of the will of Oliver Everett, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Whitall-Tatum Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- White Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

- White Pine Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- White Sewing Machine Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- William L. Gilbert Clock Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- William L. Gilbert Clock Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.
- Winchendon Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Winona Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Winslow Brothers & Smith Company, Attorney-General *ex rel. v.* Bill in equity to restrain defendant from discharging waste into Neponset River. Pending.
- Woburn Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Worcester County Institution for Savings, Worcester, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Worcester Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Pending.
- Worcester Mechanics Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Worcester North Savings Institution, Fitchburg, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Woronoco Savings Bank, Westfield, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.
- Wyandot Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Yale & Towne Manufacturing Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

York Manufacturing Company *v.* Commonwealth. Petition to recover excise tax assessed on foreign corporation. Pending.

York Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

COLLECTIONS.

Collections have been made by this department as follows: —

Corporation taxes for the year 1911, overdue and referred
by the treasurer of the Commonwealth to the Attorney-

General for collection,	\$115,426 33
Interest,	947 13
Costs,	1,914 31
Miscellaneous,	122,927 99
Total,	\$241,215 76

The following table shows a detailed statement of the Corporation Taxes: —

	Collected on Account of Corporation Tax for 1911.	Interest.	Totals.
A. B. Currier Company,	\$307 49	\$1 28	\$308 77
A. Cunningham Drug Company,	221 88	67	222 55
A. E. Gloyd Shoe Company,	44 82	76	45 58
A. H. Geuting Company,	190 77	76	191 53
A. Himmel Company,	71 72	24	71 96
A. Homer Skinner Lumber Com- pany,	573 76	3 16	576 92
A. Lowenstein & Sons, Inc.,	214 47	4 28	218 75
A. P. Downs Company,	96 28	2 18	98 46
A. S. Campbell Company,	55 22	16	55 38
Aeme Company, Inc.,	17 42	1 20	18 62
Adams Square Company,	94 13	56	94 69
Airey & Place Company,	43 03	92	43 95
Albert Dwight Smith Company,	44 08	16	44 24
Alberty Thompson Company,	53 79	—	53 79
Alfred H. Aldrich Company,	13 39	14	13 53
Alley & Emery, Inc.,	591 69	23 66	615 35
Almy Uniform Company,	103 09	31	103 40
American Belting and Tanning Company,	263 57	1 05	264 62
American Cloak Company,	134 31	40	134 71
American Co-operative Associa- tion of New England,	5 37	03	5 40
American Cork Company, Inc.,	129 09	65	129 74

	Collected on Account of Corporation Tax for 1911.	Interest.	Totals.
American Cultivator Publishing Company,	\$44 82	\$1 70	\$46 52
American Leather Goods Company,	118 33	59	118 92
American-Mexican Company,	5 00	09	5 09
American Mineral Company,	71 66	36	72 02
American Narrow Fabric Company,	51 99	18	52 17
American Oxidaze Company,	332 96	2 33	335 29
American Paper Stock Company,	26 89	—	26 89
American Skate Company,	152 40	3 50	155 90
American Stable Company,	71 72	2 72	74 44
American Wholesale Grocery Company,	484 37	4 84	489 21
American Woman's Shop, Inc.,	208 88	60	209 48
Appledore Hotel Corporation,	75 30	38	75 68
Archer & Co., Inc.,	20 87	—	20 87
Aristo Company,	8 99	—	8 99
Arroostook Farming and Lumber Company,	20 01	10	20 11
Atlantic Rubber Company,	72 61	25	72 86
Atlas Glue and Gelatine Company,	64 54	32	64 86
Atwood-Mitchell Company,	889 32	14 82	904 14
Austin Company,	14 34	06	14 40
Austin Ford & Son Company,	107 22	2 14	109 36
Austin Furniture Company,	118 92	1 45	120 37
Austin-Walker Company,	28 24	15	28 39
Auto Renting Company,	35 86	14	36 00
Automatic Appliance Company,	896 46	5 08	901 54
Automatic Gaslighting Equipment Company,	59 70	2 31	62 01
Automobile Lighting Company,	48 73	20	48 93
B. F. Smith Construction Company,	1,173 62	5 48	1,179 10
B. Feinberg Sons Company,	244 36	7 33	251 69
Baer Clothing Company,	62 75	35	63 10
Bankers' Investment Company,	140 84	70	141 54
Bartlett Box and Lumber Company,	291 36	1 17	292 53
Barton-Child Company,	46 61	14	46 75
Baseball Magazine Company,	68 85	34	69 19
Bay State Calendar Company,	132 25	53	132 78
Beacon Finance Company,	12 55	28	12 83
Belisle Printing and Publishing Company,	94 31	72	95 03
Belle Bryce Gemmel Company,	46 61	14	46 75
Belmont Spring Water Company,	161 90	78	162 68
Bent & Bush Company,	133 57	—	133 57
Berkshire Manufacturing Company, Pittsfield,	658 29	2 08	660 37

	Collected on Account of Corporation Tax for 1911.	Interest.	Totals.
Berry Dodge Company, . . .	\$58 11	\$0 85	\$58 96
Blanchard & Co., Inc., . . .	277 68	1 38	279 06
Bonny Brae Farms, Inc., . . .	76 20	38	76 58
Boston Book Company, . . .	1,237 17	10 42	1,247 59
Boston Brass Andiron Company, .	21 51	26	21 77
Boston Brokerage Company, . .	21 51	-	21 51
Boston Building Wrecking Com- pany, . . .	7 79	04	7 83
Boston Cycle and Sundry Com- pany, . . .	679 63	5 33	684 96
Boston Hay and Grain Com- pany, . . .	69 06	-	69 06
Boston Holding Company, . . .	80 00	40	80 40
Boston Ice Cream Company, . .	130 88	59	131 47
Boston Lighter Company, . . .	134 65	67	135 32
Boston Mirror Company, . . .	179 73	63	180 36
Boston Self-Locking Block Com- pany, . . .	21 51	67	21 58
Bow Ridge Development Com- pany, . . .	16 49	08	16 57
Brewer-Macauley Company, . .	5 37	-	5 37
Brighton Dressed Meat Company,	46 58	23	46 81
Brockton Die Company, . . .	98 47	49	98 96
Brown-Binnian Company, . . .	80 68	40	81 08
Brown Garage and Carriage Company, . . .	143 44	57	144 01
Bruce-Hibbard Electric Company,	407 90	2 04	409 94
Builders' Iron and Steel Com- pany, . . .	75 30	32	75 62
Bullard Company, . . .	82 98	41	83 39
Bunkio Matsuki Corporation, . .	41 41	21	41 62
Burkinshaw Knife Company, . .	42 94	-	42 94
Burleigh & Martin, Inc., . . .	51 63	18	51 81
Burtworth Carpet Company, . .	130 92	-	130 92
Butman & Cressey Company, . .	301 22	1 51	302 73
C. D. Wright Company, . . .	89 65	1 26	90 91
C. E. Dustin Company, . . .	72 58	29	72 87
C. G. Aldrich Company, . . .	25 10	23	25 33
C. I. Nesmith Company, . . .	37 65	19	37 84
C. J. Roadstrand Company, . . .	177 05	59	177 64
C. P. Lovering Company, . . .	62 75	25	63 00
C. W. Luce & Co., Inc., . . .	522 62	5 48	528 10
C. W. Stone Company, . . .	89 65	55	90 20
Cameron Car Company, . . .	859 94	-	859 94
Campbell Company, . . .	11 79	09	11 88
Canton Ice Company, . . .	78 89	40	79 29
Central Automobile Station Company, . . .	282 39	3 77	286 16
Central Cloak Company, . . .	96 82	50	97 32
Central Dry-Goods Company, . .	50 51	25	50 76

	Collected on Account of Corporation Tax for 1911.	Interest.	Totals.
Central Ice Manufacturing Com- pany,	\$7 17	\$0 03	\$7 20
Centre Street Garage, Inc., . .	89 65	2 13	91 78
Chapel Mills Manufacturing Com- pany,	464 38	2 09	466 47
Charles D. Brown & Co., Inc., .	711 01	3 79	714 80
Charles H. Morey Company, . .	9 45	05	9 50
Charles S. Gove Company, . .	161 37	81	162 18
Charles W. Blake Company, . .	53 79	27	54 06
Charles West Lumber Company, .	86 06	40	86 46
Chattel Loan Company,	1,344 75	11 43	1,356 18
Cheney & Thomson Company, . .	103 99	52	104 51
Citizens' Loan Association, . .	22 25	11	22 36
Clapp-Eastham Company, . . .	67 70	23	67 93
Clinton Fruit Company,	47 22	18	47 40
Coates Clipper Manufacturing Company,	161 37	2 09	163 46
Cobb & White Company,	38 01	19	38 20
Cochrane Manufacturing Com- pany,	2,252 27	7 88	2,260 15
Cohen & Priest Company,	57 37	58	57 95
Collins Hardware Company, . .	2,420 55	35 52	2,456 07
Colonial Bed Company,	121 92	61	122 53
Colonial Interstate Express Com- pany,	17 93	—	17 93
Columbia Comb Company,	181 09	48	181 57
Columbia Securities Company, . .	261 95	6 00	267 95
Columbian Furniture Company, .	39 28	42	39 70
Commercial Fibre Company, . . .	119 66	5 14	124 80
Common Sense Gum Company, . .	110 17	3 97	114 14
Commonwealth Hospital,	280 64	4 20	284 84
Conduit and Cable Manufacturing Company,	519 97	1 56	521 53
Connecticut Valley Street Railway Company,	1,585 53	4 75	1,590 28
Consolidated Produce Company, .	37 90	51	38 41
Consumers' Co-operative Com- pany,	9 01	21	9 22
Coulter Coal and Lumber Com- pany,	121 02	—	121 02
Creditors Adjustment Bureau, Inc.,	26 89	21	27 10
Crocker Drug Company,	26 89	14	27 03
Cross Street Shoe Store, Inc., . .	46 68	21	46 89
Crown Novelty Company,	15 00	19	15 19
Crown Packing Company,	89 65	45	90 10
Culver-Stearns Manufacturing Company,	44 82	18	45 00
Cummings Theatre, Inc.,	268 95	1 42	270 37
Cummings Fish Company,	21 51	—	21 51

	Collected on Account of Corporation Tax for 1911.	Interest.	Totals.
Cummings Machine Works, . . .	\$194 77	\$0 88	\$195 65
Curtis & Cameron, Inc., . . .	80 68	39	81 07
Curtis Drug Company, . . .	14 34	—	14 34
Cushing Medical Supply Com- pany, . . .	161 37	80	162 17
D. Caro & Co., Inc., . . .	7 17	—	7 17
Dadmun Company, . . .	129 09	2 59	131 68
Daley & Wanzer Allerton Express Company, . . .	177 23	90	178 13
Dalton-Ingersoll Manufacturing Company, . . .	869 96	4 05	874 01
D'Arcy & Sons Company, . . .	1,079 49	2 51	1,082 00
Daudelin & Cotton, Inc., . . .	22 86	—	22 86
Davies Rose & Co., Ltd., . . .	179 30	—	179 30
Desmond-Hayden Shoe Com- pany, . . .	58 81	1 35	60 16
Dill Cattle Company, . . .	100 00	40	100 40
Dr. Hallock Drug Company, . . .	43 03	22	43 25
Dodge Furniture Company, . . .	357 70	1 07	358 77
Driscoll & Co., Inc., . . .	71 72	21	71 93
Dukelow & Walker Company, . . .	43 03	20	43 23
Dunlap Cooke Company, Ltd., . . .	367 56	1 47	369 03
Dustbane Manufacturing Com- pany, . . .	383 70	8 44	392 14
Dyke Mill, . . .	12 28	06	12 34
E. C. Howard Company, . . .	215 16	64	215 80
E. G. Tutein & Co., Inc., . . .	146 30	73	147 03
E. L. LeBaron Foundry Com- pany, . . .	32 48	19	32 67
E. L. Smith Company, . . .	107 58	3 98	111 56
E. R. Brown Beer Pump Com- pany, . . .	45 75	1 13	46 88
East Douglas Clothing Com- pany, . . .	18 82	—	18 82
Eastern Discount Company, . . .	8 49	06	8 55
Eastern Electric Company of New Bedford, . . .	71 72	1 25	72 97
Eastern Furniture Company, . . .	13 71	—	13 71
Eastern Handle Company, . . .	47 96	67	48 63
Easthampton Elastic Web Com- pany, . . .	166 74	—	166 74
Eaton Candy Company, . . .	32 27	32	32 59
Eco Manufacturing Company, . . .	42 94	19	43 13
Economy Drug Company, . . .	43 03	13	43 16
Edward Holden Company, . . .	125 22	2 88	128 10
Edward T. Harrington Company, . . .	132 37	66	133 03
Eldridge Poultry Farm, Inc., . . .	162 23	81	163 04
Electric Maintenance Company, . . .	15 95	—	15 95
Electric Weld Company, . . .	113 51	28	113 79
Elk River Milling Company, . . .	34 65	—	34 65

	Collected on Account of Corporation Tax for 1911.	Interest.	Totals.
Ellsworth Manufacturing Com- pany,	\$45 18	—	\$45 18
Empire Woolen Company, . . .	66 69	\$0 30	66 99
Essex Engraving Company, . .	43 51	22	43 73
Everson Manufacturing Com- pany,	228 28	1 18	229 46
Ewell-Cooper Company, . . .	21 51	10	21 61
F. D. C. Manufacturing Com- pany, Inc.,	35 86	—	35 86
F. H. Putnam Company, . . .	89 65	45	90 10
F. L. Horton Manufacturing Company,	117 31	58	117 89
F. R. Parker Company, . . .	118 33	39	118 72
F. S. McDermott Company, . .	89 65	1 79	91 44
F. T. Morecombe White Com- pany,	74 40	37	74 77
F. W. Flosdorf Company, . . .	110 26	55	110 81
Fabrizio & Wingate Company, .	17 93	07	18 00
Fall River Granite Company, .	20 11	30	20 41
Famous Ladies' Tailoring Com- pany,	11 29	06	11 35
Felton-Turner Heating Company,	193 50	96	194 46
Finestone-Hahn Company, . . .	10 43	63	11 06
Fink Cigar Company,	44 82	23	45 05
Finnish Socialistic Publishing Company,	171 98	2 63	174 61
Fisher Bros. Company,	144 33	72	145 05
Fisher Chrome Tanning Com- pany,	50 00	25	50 25
Fiske Shoe and Leather Company,	373 84	1 87	375 71
Fitchburg Real Estate and Loan Company,	90 18	1 34	91 52
Foan Brothers Company,	64 54	20	64 74
Framingham Commission House, Inc.,	71 46	2 14	73 60
Frank A. Andrews Company, . .	201 24	8 84	210 08
Frank L. Perkins Company, . .	35 86	09	35 95
Frank P. Bennett & Co., Inc., .	125 51	50	126 01
Frank P. Brown Company, . . .	34 42	18	34 60
Franklin Clothing Company, . .	89 65	45	90 10
Franklin Mills Corporation, . .	165 85	41	166 26
Fred A. Loud Company,	89 65	3 59	93 24
Fred F. Squire Company, . . .	170 94	31	171 25
Fred S. and A. D. Gore Cor- poration,	89 65	3 40	93 05
Fuller-Greene Company,	277 91	1 25	279 16
G. B. Lawrence Company, . . .	56 47	28	56 75
G. H. Polley Company,	5 37	—	5 37
G. M. Hyams Company,	28 68	65	29 33
G. W. Peterson Company, . . .	8 96	12	9 08

	Collected on Account of Corporation Tax for 1911.	Interest.	Totals.
Galassi Mosaic and Tile Com- pany,	\$51 96	\$0 15	\$52 11
Garnett Leather Company, . . .	92 73	46	93 19
Geddis Remedy Company, . . .	18 48	10	18 58
General Motor Company, . . .	5 37	—	5 37
General Sales Company, . . .	35 66	18	35 84
Geo. A. Turner Company, . . .	53 79	27	54 06
Geo. B. Perkins Company, . . .	8 60	—	8 60
Geo. C. Melville Company, . . .	268 95	81	269 76
Geo. C. Moore Wool Scouring Mills,	206 19	1 03	207 22
Geo. D. Emerson Company, . . .	717 20	2 15	719 35
Geo. F. Vester Company, . . .	48 41	72	49 13
Geo. J. Kelly Company, . . .	466 18	2 10	468 28
Geo. P. Bingham Company, . . .	89 65	41	90 06
Gilchrist Drug Company, . . .	25 41	—	25 41
Globe Amusement Company, . . .	129 09	1 64	130 73
Globe Clothing Company, . . .	112 24	76	113 00
Gloucester Hospital, Inc., . . .	123 62	62	124 24
Golden Grain Farming Company, .	22 40	12	22 52
Goldman Brothers Company, . . .	62 75	86	63 61
Goodwin Company,	16 24	24	16 48
Gordon & Sparrow Company, . . .	197 23	59	197 82
Goward's Market Company, . . .	44 82	13	44 95
Graham Company,	67 23	33	67 56
Grand Amusement Company of Holyoke, Mass.,	89 65	—	89 65
Grand Shoe Company,	48 41	2 08	50 49
Grandfield's Pharmacy, Inc., . .	107 58	54	108 12
Grant Nail and Supply Company, .	860 64	4 73	865 37
Grastorf Turner Company, . . .	7 53	—	7 53
Greenfield Recorder Company, . .	22 41	12	22 53
Griffin Amusement Company, . . .	35 86	18	36 04
Grimwood Tailoring Company, . .	9 00	12	9 12
Grout Automobile Company, . . .	716 30	3 25	719 55
Grueby Pottery Company, . . .	18 43	33	18 76
Guilford Kendrick & Ladd Com- pany,	315 56	1 16	316 72
H. A. Johnson Company,	3,233 44	16 17	3,249 61
H. A. Rich Company,	222 42	1 11	223 53
H. C. Girard Company,	150 61	75	151 36
H. D. Hall Company,	26 89	13	27 02
H. M. Downs Printing Company, .	17 48	10	17 58
H. M. Kinports Company,	114 75	4 59	119 34
Halford Company,	26 89	11	27 00
Hallstone Electric Company, . . .	69 92	35	70 27
Hampden Creamery Company, . . .	114 75	45	115 20
Hampden Shoe Company,	268 95	1 34	270 29
Harding Uniform and Regalia Company,	258 19	10 33	268 52

	Collected on Account of Corporation Tax for 1911.	Interest.	Totals.
Harris & Lawton, Inc.,	\$896 50	\$17 90	\$914 40
Harry L. Cohen Company, . . .	89 11	—	89 11
Harvard Automobile Company, .	228 30	1 14	229 44
Haverhill Baseball and Athletic Association,	8 60	—	8 60
Haverhill Motor Mart Inc., . . .	17 93	23	18 16
Healey Sewer Machine and Con- struction Company,	77 90	1 87	79 77
Heintzemann Press,	80 68	26	80 94
Henry F. Farrow Company, . . .	89 65	45	90 10
Henry F. Miller & Sons Piano Company,	2,304 25	22 27	2,326 52
Henry H. Tuttle Company, . . .	470 66	1 88	472 54
Hertig Furnace Company,	49 48	25	49 73
Hetherstone Importing Company,	425 83	1 99	427 82
Highland Drug and Chemical Corporation,	14 34	15	14 49
Hillcrest Water Company,	89 65	1 85	91 50
Hilton & Sons Express Company, .	76 02	—	76 02
Hinds' Hand Laundry Company, .	43 03	21	43 24
Hitchcock Supply Company, . . .	596 38	2 25	598 63
Hodges Garage Company,	81 40	40	81 80
Hodgson, Kennard & Co., Inc., .	1,074 00	10 02	1,084 02
Hoffecker Company,	86 06	26	86 32
Holyoke Supply Company,	233 09	70	233 79
Hooper Printing Company,	100 40	50	100 90
Horace K. Turner Corporation, .	784 79	13 07	797 86
Hoyt Company,	403 42	2 00	405 42
Hub Mattress Company,	12 55	—	12 55
Hudson Hose Mender Company, .	88 53	26	88 79
Hudson Lithuanian Corporation, .	16 31	32	16 63
Huntt's Lunch Company,	448 25	1 76	450 01
Hutchins Organ Company,	239 83	80	240 63
Ideal Dental Laboratory, Inc., .	26 89	15	27 04
Ima-Fibre Company,	22 14	11	22 25
Import and Export Associates, .	32 27	51	32 78
Indian Mica Company,	29 85	14	29 99
Inter-National Grocery Company,	154 64	3 54	158 18
Inter-State Lumber Company, .	242 05	1 21	243 26
Interstate Oil Company,	18 82	37	19 19
Inter-trust Security Company, .	89 65	1 00	90 65
Investors Corporation Company, .	5 00	03	5 03
Isaac H. Dinner Company,	35 86	18	36 04
Italian-American Corporation, .	31 37	1 38	32 75
Italian Co-operative Market of Lynn, Inc.,	26 89	14	27 03
Italian Importing Company, Inc.,	40 34	11	40 45
J. A. Keating Company,	197 23	2 63	199 86
J. B. Judkins Company,	836 12	2 09	838 21
J. D. Packard & Sons Company, .	161 37	64	162 01

	Collected on Account of Corporation Tax for 1911.	Interest.	Totals.
J. D. Putnam Sons Company,	\$59 61	—	\$59 61
J. E. Paris Company,	167 84	\$0 84	168 68
J. F. Williams Company,	13 44	18	13 62
J. G. Walker & Sons Corporation,	238 02	1 19	239 21
J. H. Chandler Company,	28 83	—	28 83
J. H. Folkins Company,	191 85	4 53	196 38
J. K. Taylor Manufacturing Com- pany,	188 26	56	188 82
J. L. Legein Ice Cream Company,	79 50	40	79 90
J. Nardi Company,	71 00	1 63	72 63
Jamaica Plain Auto Station, Inc.,	16 13	20	16 33
James B. Wood & Son Company,	206 19	—	206 19
James Barrett Manufacturing Company,	519 97	1 90	521 87
James Donovan Slipper Com- pany,	69 92	15	70 07
James Sunderland & Son Com- pany,	250 12	1 50	251 62
Jeremiah Clark Machinery Com- pany,	196 33	7 84	204 17
Joe Cotter, Inc.,	139 85	41	140 26
John Cavanagh & Son Building Moving Company,	201 71	3 63	205 34
John F. Ryan Company,	172 57	—	172 57
John J. Cluin Company,	44 82	23	45 05
Johnson Palm Leaf Goods Com- pany,	12 37	07	12 44
Joss Brothers Company,	53 79	86	54 65
Kaleva Co-operative Association,	45 32	17	45 49
Katzes & Phelan Amusement Company,	5 37	07	5 44
Keniston Engineering Company,	89 65	45	90 10
Kenney Brothers Company,	159 75	48	160 23
King Mining Company,	85 00	2 98	87 98
Kinney Heating and Supply Company,	35 53	16	35 69
Kinsley Iron and Machine Com- pany,	62 75	13	62 88
Kleno Manufacturing Company,	17 93	11	18 04
Knox Automobile Company,	1,563 40	8 86	1,572 26
L. Diamond Company,	94 67	47	95 14
L. W. Bigelow's Son Furniture Company,	143 44	57	144 01
Lamere & Robinson Company,	64 54	1 10	65 64
Lang & Jacobs Company,	89 65	40	90 05
Langham Pharmacy,	32 27	15	32 42
Lawrence B. Smith Company,	304 36	1 52	305 88
Lawrence Baseball Association,	134 47	3 33	137 80
Lawrence Beverage Company,	45 54	22	45 76
Lawrence Dye Works Company,	3,106 42	15 53	3,121 95

	Collected on Account of Corporation Tax for 1912.	Interest.	Totals.
Leader, Inc.,	\$66 34	\$0 34	\$66 68
Leavitt's Scotch Polish Company,	23 57	11	23 68
Leighton Roofing Company,	15 06	—	15 06
Leominster Novelty Company,	93 23	1 40	94 63
Lewis F. Small, Inc.,	17 93	—	17 93
Liberty Lumber Company,	306 87	1 53	308 40
Linscott Motor Company,	292 25	1 61	293 86
Lithuanian Workers' Corporation,	14 30	—	14 30
London Harness Company,	806 85	8 20	815 05
London Raincoat Company,	80 68	35	81 03
Lord Publishing Company,	91 44	2 19	93 63
Lovell's, Inc.,	71 72	19	71 91
Lucy Mill and Lumber Company,	11 97	05	12 02
Lunt Moss Company,	680 89	2 38	683 27
Lynch Company,	107 58	54	108 12
Lynch Heel Company,	26 89	14	27 03
Lynn Public Market Company,	61 67	31	61 98
Lynn Shoe Manufacturers' Asso- ciation, Inc.,	10 75	—	10 75
Lynn Storage Company,	170 33	3 00	173 33
Lyric Amusement Company,	156 97	66	157 63
M. Daly Company,	8 06	04	8 10
M. J. Silva Company,	86 06	4 04	90 10
M. Marks Company,	53 79	16	53 95
MacDonald Ice Cream Company,	23 30	12	23 42
Macker-Tyler Company,	28 68	11	28 79
Magee Furnace Company,	4,031 20	22 18	4,053 38
Maine State Creamery Company,	17 93	13	18 06
Majestic Company,	161 37	82	162 19
Malden Grain Company,	111 16	56	111 72
Manhattan Company,	35 86	82	36 68
Mansfield Cracker Company,	175 94	53	176 47
Mansfield Printing Company,	22 07	53	22 60
Manufacturers Shoe Trimming Company,	52 00	30	52 30
Marshall-Hackel Company,	15 72	23	15 95
Massachusetts Apple Orchard Company,	5 20	03	5 23
Massachusetts Experimental and Construction Company,	25 31	11	25 42
Massachusetts Fuel Saving Radiator Company,	29 10	14	29 24
Massachusetts Piano Manufac- turing Company,	91 47	46	91 93
Massachusetts Shoe Company,	129 09	65	129 74
Massasoit Company,	287 54	2 06	289 60
Matthew F. Sheehan Company,	358 60	1 32	359 92
Maurice J. Borofsky Company,	26 89	—	26 89
Mayflower Laundry Company,	161 37	2 74	164 11
Maynard & Co., Inc.,	1,075 80	5 38	1,081 18

	Collected on Account of Corporation Tax for 1911.	Interest.	Totals.
McLean-Jones Oil and Supply Company,	\$53 79	\$0 27	\$54 06
Mellish & Byfield Manufacturing Company,	69 92	35	70 27
Merchants and Manufacturers Credit Company,	1,332 19	5 99	1,338 18
Merrow Machine Company,	121 56	24	121 80
Messenger Printing and Publishing Company,	39 64	20	39 84
Metropolitan Lithograph and Publishing Company,	251 02	8 11	259 13
Mica Varnish and Insulation Company,	79 25	1 58	80 83
Milford Rubber Cement Company,	8 96	08	9 04
Miller Brothers, Inc.,	206 19	2 06	208 25
Mitchell Press,	11 11	29	11 40
Monarch Valve and Manufacturing Company,	822 09	4 11	826 20
Moon Motor Company of Boston,	268 95	1 79	270 74
Morse-Gemmell Company,	17 96	23	18 19
Murphy Boot and Shoe Company,	304 55	2 74	307 29
Mutual Coal Company of Fitchburg, Mass.,	31 87	49	32 36
National Envelope Sealing and Stamping Machine Company,	60 00	1 35	61 35
National Envelope Sealing and Stamping Manufacturing Company,	214 03	5 18	219 21
National Matzo Company of Boston,	53 34	2 13	55 47
National Textile Exposition, Inc.,	17 93	35	18 28
Navin & Kelly Company,	319 63	96	320 59
New Bedford Auto Company,	80 68	32	81 00
New Bedford Clothing and Jewelry Company,	35 86	16	36 02
New Can Company,	233 09	3 33	236 42
New England Candle Company,	14 52	08	14 60
New England Cloak and Suit Company,	155 99	36	156 35
New England Directory Company,	15 07	23	15 30
New England Discount Company,	261 58	1 64	263 22
New England Gum Company,	26 89	11	27 00
New England Office Furniture Company,	156 20	6 09	162 29
New England Reed Company,	569 45	2 28	571 73
New York Mattress Company,	107 58	35	107 93
Norris F. Comley Conservatories,	64 54	32	64 88
North Main Market Company,	71 72	36	72 06

	Collected on Account of Corporation Tax for 1911.	Interest.	Totals.
Northampton Company, . . .	—	—	—
Northampton Emery Wheel Company, . . .	\$490 85	\$2 29	\$493 14
Office Specialties de Luxe, Inc., . .	94 07	39	94 46
Office Specialty Company, . . .	19 90	10	20 00
Old South Lunch, Inc., . . .	53 79	1 23	55 02
Olympic Theatre Company, . . .	44 82	22	45 04
Oscar T. Gove Company, Inc., . . .	134 47	67	135 14
Oxidite Manufacturing Company, . .	24 22	14	24 36
P. B. Sanford Company, . . .	30 48	15	30 63
P. H. Prior Company, . . .	250 64	90	251 54
P. P. Emery Manufacturing Com- pany, . . .	139 02	—	139 02
P. R. Glass Company, . . .	123 68	7 91	131 59
Parker & Page Company, . . .	1,443 36	7 22	1,450 58
Patrons Co-operative Association, Paye & Baker Manufacturing Company, . . .	38 87	19	39 06
Payson Mitchell Company, . . .	621 72	2 69	624 41
Peabody Medical Company, . . .	107 58	54	108 12
Peoples Co-operative Grocery Company, . . .	26 89	—	26 89
Peoples Drug Store Company, . . .	30 66	60	31 26
Peoples' Furniture Company, . . .	24 20	12	24 32
Peoples' Trading Company, . . .	107 58	62	108 20
Perkins & Co., Inc., . . .	26 89	46	27 35
Phelps & Bradley Company, . . .	248 43	7 34	255 77
Phoenix Securities Company, . . .	448 25	2 24	450 49
Pickard Bros. Motor Car Com- pany, . . .	6 45	18	6 63
Pierce & Barnes Company, . . .	1,065 93	—	1,065 93
Pierson Pharmacy Company, . . .	17 93	09	18 02
Pike Tobacco Company, . . .	143 44	72	144 16
Pittsfield Baseball and Athletic Association, Inc., . . .	36 57	50	37 07
Plunger Elevator Company, . . .	42 67	85	43 52
Plymouth Manufacturing Com- pany, The, . . .	89 29	60	89 89
Plymouth Rock Candy Company, . .	86 97	44	87 41
Plympton Manufacturing Com- pany, . . .	71 72	2 86	74 58
Polar Mining and Dredging Com- pany, . . .	199 90	90	200 80
Post Office Pharmacy, Inc., . . .	300 00	3 14	303 14
Prince Medicine Company, . . .	53 79	54	54 33
Prudential Sales Company, . . .	44 82	18	45 00
Purdy Shoe Company, . . .	60 45	1 20	61 65
Purity Confectionery Company, . .	53 79	—	53 79
Queensbury Mills, . . .	46 61	1 07	47 68
Quincy Adams Quarry Company, . .	2,833 58	42 50	2,876 08
	43 03	17	43 20

	Collected on Account of Corporation Tax for 1911.	Interest.	Totals.
R. L. Cleveland Company, . . .	\$448 25	\$2 24	\$450 49
R. M. Buckman & Co., Inc., . .	23 57	54	24 11
Ralph F. Russell Company, . . .	87 08	1 21	88 29
Regal Laundry Company, . . .	53 79	26	54 05
Remington Manufacturing Com- pany, . . .	8 06	14	8 20
Remington Tool and Machine Company, . . .	110 09	55	110 64
Revere Cloak and Suit Company,	46 61	23	46 84
Ricker Paint Company, . . .	89 65	41	90 06
Riverside Japannery, Inc., . . .	241 01	1 32	242 33
Riverside Waist Company, . . .	35 86	18	36 04
Robert R. McNutt, Inc., . . .	67 23	3 56	70 79
Robinson-Brockway Manufactur- ing Company, . . .	130 88	39	131 27
Rosengard Furniture Company, .	129 09	33	129 42
Ross Brothers Company, . . .	1,344 75	4 03	1,348 78
Royal Fibre Company, . . .	43 92	16	44 08
Royal Shoe Company, . . .	116 90	59	117 49
Ruff Bros. Company, . . .	170 65	2 38	173 03
Russ, Eveleth & Ingalls Com- pany, . . .	340 38	12 93	353 31
S. Lebow Company, . . .	53 79	96	54 75
S. M. Howes Company, . . .	1,846 79	9 23	1,856 02
S. W. Loomis Company, . . .	347 37	1 73	349 10
Safety Gas Lighter Company, .	38 72	18	38 90
Sagamore Engine Company, Inc., . . .	101 30	2 55	103 85
St. Clairs', Inc., . . .	301 65	1 35	303 00
Salem Press Company, . . .	62 75	24	62 99
Saskatchewan Investment Com- pany, . . .	52 40	16	52 56
Saunders Sales Company, . . .	39 28	20	39 48
Scandinavian Co-operative Gro- cery Union, . . .	61 42	32	61 74
Seaside Foundry, Inc., . . .	6 27	—	6 27
Sectional Rubber Tire Company, .	105 85	32	106 17
Seth W. Fuller Company, . . .	116 16	2 09	118 25
Shadduck & Normandin Com- pany, . . .	96 82	32	97 14
Sheedy Amusement Company, . .	22 50	33	22 83
Shultz-Goodwin Company, . . .	842 71	6 70	849 41
Silas Peirce & Co., Ltd., . . .	2,110 25	10 55	2,120 80
Small, Maynard & Co., Inc., . .	1,075 80	3 59	1,079 39
Somerset Coal Company, . . .	53 79	54	54 33
Somerville Lumber Company, . .	10 00	20	10 20
Soule Art Publishing Company, .	164 95	74	165 69
Southgate Machinery Company, .	54 65	27	54 92
Southgate Press — T. W. Ripley Company, . . .	609 62	3 05	612 67

	Collected on Account of Corporation Tax for 1911.	Interest.	Totals.
Spatula Publishing Company, .	\$39 44	\$0 20	\$39 64
Springfield Brazing Company, .	5 37	03	5 40
Springfield Fruit and Produce Company, .	5 57	—	5 57
Springfield Specialty Company, .	22 71	—	22 71
Spurr Vencer Company, .	165 85	86	166 71
Standard Jewelry Company, .	140 75	85	141 60
Standard Specialty Sales Com- pany, .	10 54	45	10 99
Standard Stoneware Company, .	23 12	12	23 24
State Electrical Manufacturing Company, .	18 28	32	18 60
Sterling Manufacturing Company, .	10 54	05	10 59
Story Simmons Company, .	47 69	23	47 92
Symonds & Poor Carbonator Company, .	501 57	26 09	527 66
T. H. O'Donnell & Co., Inc., .	161 37	3 22	164 59
T. W. O'Connor Company, .	48 41	—	48 41
Tarbett Machine Company, .	18 82	—	18 82
Tarr Marine Paint Company, .	20 00	—	20 00
Taunton Evening News, .	161 37	81	162 18
Taxi Motor Cab Company of Boston, .	475 14	2 38	477 52
Telepost Company of Massa- chusetts, .	17 93	—	17 93
Thayer Woolen Company, .	268 05	1 07	269 12
Therapeutic Publishing Company, .	22 05	66	22 71
Thomas D. Gard Company, Inc., .	65 08	42	65 50
Thomas J. Shea Company, .	7 17	23	7 40
Tichnor Brothers, Inc., .	117 88	4 36	122 24
Tolland Company, .	91 76	46	92 22
Trombly Jewelry Company, .	244 58	3 34	247 92
Tudor Press, Inc., .	204 18	4 90	209 08
Union Commercial Paper Com- pany, .	121 40	78	122 18
Union Curled Hair Company, .	27 97	42	28 39
Union Furniture Company, .	140 33	70	141 03
Union Manufacturing and Drop Forge Company, .	133 72	2 09	135 81
Union Parlor Furniture Com- pany, .	44 82	16	44 98
Union Skewer Company, .	8 96	14	9 10
United Cloak and Suit House Company, .	13 44	—	13 44
United Hospitals Drug Company, (Inc.), .	24 95	—	24 95
United States Column Company, .	926 33	18 52	944 65
University Paper Box Company, .	215 16	1 44	216 60
V. A. Zorbas Confectionery Com- pany, Inc., .	35 86	1 57	37 43

	Collected on Account of Corporation Tax for 1911.	Interest.	Totals.
Vacuum Glass Company, . . .	\$107 58	\$0 43	\$108 01
W. A. Buxton Machinery Com- pany, . . .	253 06	76	253 82
W. A. Norton Company, . . .	35 86	18	36 04
W. B. Norris Corporation, . . .	13 48	—	13 48
W. F. Godber Company, . . .	71 54	1 43	72 97
W. K. Farrington Press, . . .	91 44	2 19	93 63
W. M. McDonald Company, . . .	241 00	96	241 96
W. N. Roberts Company, . . .	8 30	04	8 34
W. O. Simmons Company, . . .	69 03	35	69 38
W. P. Goode Brush Company, . . .	91 98	2 11	94 09
W. Pence Mitchell Hat Company, . . .	15 24	06	15 30
W. T. Cardy & Sons Company, . . .	233 09	7 32	240 41
Wachtel-Pickert Company, . . .	151 54	53	152 07
Wadleigh Company, . . .	118 55	59	119 14
Walbuck Crayon Company, . . .	37 65	19	37 84
Waldron Shoe Company, . . .	334 84	2 23	337 07
Walker Bros. Dyeing and Bleach- ing Company, . . .	26 89	14	27 03
Warren Garage Company, . . .	24 74	—	24 74
Warren Manufacturing Company, . . .	33 33	1 07	34 40
Washburn Trucking Company, . . .	32 27	32	32 59
Waverly Liquor Company, . . .	53 79	1 00	54 79
Wellmade Can Company, . . .	39 44	40	39 84
Whitcomb Jewelry Company, . . .	15 27	—	15 27
White Store Corporation, Haver- hill, . . .	26 89	—	26 89
White Store (Inc.), . . .	87 58	26	87 84
Whiting Manufacturing Company, . . .	141 64	71	142 35
Whittier Woodenware Company, . . .	537 90	2 69	540 59
Whittredge Bag Company, Inc., . . .	23 30	10	23 40
Wilbert E. Welch Company, . . .	29 40	15	29 55
William Allen Sons' Company, . . .	294 05	1 47	295 52
William Bourne & Son Piano Company, . . .	53 79	27	54 06
William L. Browne Electric Company, . . .	111 52	56	112 08
Wire-Bound Packing Case Com- pany of Massachusetts, . . .	153 30	77	154 07
Woman's Shop, Inc., . . .	349 63	1 04	350 67
Woodward-Reopell Company, . . .	96 82	1 51	98 33
Worcester Horse Sale Company, . . .	5 00	30	5 30
Worcester Lithographing Com- pany, . . .	172 12	86	172 98
Woronoco Heating and Plumbing Company, . . .	89 65	1 80	91 45
Yo Yo Beverage Company, . . .	71 72	36	72 08
	\$115,426 33	\$947 13	\$116,373 46

EXTRADITION AND INTERSTATE RENDITION.

The following applications for requisitions for fugitives from justice have been referred by His Excellency the Governor to this department during the year ending Dec. 31, 1912, for examination and report thereon: —

Date of Reference.	State or Country upon whose Executive Requisition was made.	Name of Fugitive.	Crime charged.	Venue of Prosecution.	Report.
1911. Dec. 27	Maine,	George A. Ferris,	Perjury,	Middlesex,	Lawful and in proper form.
1912. Jan. 15	New Jersey,	Charles Rosenfield,	Breaking and entering,	Bristol,	Lawful and in proper form.
Jan. 15	New York,	Alfred A. Mulliken,	Larceny,	Suffolk,	Lawful and in proper form.
Jan. 23	Louisiana,	Frank J. Linehan,	Larceny, receiving stolen goods, conspiracy.	Suffolk,	Lawful and in proper form.
Jan. 24	Indiana,	Michael J. Coyle,	Larceny,	Suffolk,	Lawful and in proper form.
Jan. 24	New York,	John F. Murphy,	Larceny,	Suffolk,	Lawful and in proper form.
Jan. 25	Pennsylvania,	William Green,	Breaking and entering, and larceny,	Norfolk,	Lawful and in proper form.
Jan. 29	Pennsylvania,	Lawrence J. Samuels, <i>alias</i> ,	Forgery,	Suffolk,	Lawful and in proper form.
Jan. 31	New York,	Julius Sternberge, <i>alias</i> ,	Forgery,	Suffolk,	Lawful and in proper form.
Feb. 2	Illinois,	John Dixon, <i>alias</i> ,	Larceny,	Suffolk,	Lawful and in proper form.

Date of Reference.	State or Country upon whose Executive Requisition was made.	Name of Fugitive.	Crime charged.	Venue of Prosecution.	Report.
1912.					
Feb. 8	Illinois,	Alfonzo Fiorentini,	Conspiracy to steal,	Suffolk,	Lawful and in proper form.
Feb. 12	Missouri,	Frank Toohey, <i>alias</i> ,	Larceny,	Suffolk,	Lawful and in proper form.
Feb. 13	Utah,	Wong Yonn Wei,	Larceny,	Suffolk,	Lawful and in proper form.
Feb. 13	New Hampshire,	Joseph H. Donovan,	Larceny,	Middlesex,	Lawful and in proper form.
Feb. 15	New York,	Joseph Reimes,	Nonsupport of wife and child,	Suffolk,	Lawful and in proper form.
Feb. 20	Michigan,	George Cline, <i>alias</i> ,	Larceny,	Suffolk,	Lawful and in proper form.
Feb. 20	New York,	John J. Devlin,	Desertion,	Suffolk,	Lawful and in proper form.
March 1	Missouri,	George Davis, <i>alias</i> ,	Larceny,	Suffolk,	Lawful and in proper form.
March 5	California,	Arthur W. Shaw,	Larceny,	Suffolk,	Lawful and in proper form.
March 11	New York,	Samuel Cohen,	Forgery,	Suffolk,	Lawful and in proper form.
March 11	Maine,	Harry J. Godfrey and Bertha Godfrey,	Larceny,	Suffolk,	Lawful and in proper form.
March 11	Dominion of Canada,	William Russell, <i>alias</i> ,	Forgery,	Suffolk,	Lawful and in proper form.
March 12	Pennsylvania,	Guio Leoni,	Larceny,	Suffolk,	Lawful and in proper form.
March 14	New York,	George A. Pyne,	Larceny,	Worcester,	Lawful and in proper form.
March 20	New York,	Thomas Sullivan,	Desertion and nonsupport,	Hampden,	Lawful and in proper form.
April 3	New York,	Harry Becker,	Breaking and entering, and larceny,	Suffolk,	Lawful and in proper form.
April 9	Pennsylvania,	Richard P. Thorn,	Larceny,	Suffolk,	Lawful and in proper form.
April 17	Virginia,	John Steosmides, <i>alias</i> ,	Conspiracy,	Suffolk,	Lawful and in proper form.
April 24	California,	William A. Dorr,	Murder,	Essex,	Lawful and in proper form.

April 29	New York,	Ralph S. Silliphant,	Larceny,	Essex,	Lawful and in proper form.
April 30	New York,	Franklin N. Stackpole,	Nonsupport of wife and children,	Suffolk,	Lawful and in proper form.
May 3	New York,	John Yonkofsky,	Breaking and entering,	Bristol,	Lawful and in proper form.
May 8	Georgia,	Frederick McGinnis, <i>alias</i> ,	Larceny,	Suffolk,	Lawful and in proper form.
May 16	Ohio,	Charles J. Logan, <i>alias</i> ,	Larceny,	Suffolk,	Lawful and in proper form.
May 21	New York,	Michael O'Donovan,	Nonsupport,	Suffolk,	Lawful and in proper form.
June 4	Connecticut,	John Oliver,	Desertion of wife and child,	Hampden,	Lawful and in proper form.
June 14	Michigan,	Henry Leroy Robinson,	Desertion and nonsupport,	Berkshire,	Lawful and in proper form.
June 18	Illinois,	David Classin,	Nonsupport of wife and child,	Suffolk,	Lawful and in proper form.
June 20	New York,	Thomas C. Clark,	Nonsupport,	Suffolk,	Lawful and in proper form.
June 24	New Hampshire,	Willis O. Hodge, <i>alias</i> ,	Polygamy,	Suffolk,	Lawful and in proper form.
June 24	Tennessee,	Larkin B. Flannigan,	Forgery,	Suffolk,	Lawful and in proper form.
June 24	Rhode Island,	Benjamin Robertson,	Forgery,	Bristol,	Lawful and in proper form.
June 26	Maine,	John J. Doherty,	Larceny,	Plymouth,	Lawful and in proper form.
July 2	California,	Frank J. Whiteside,	Larceny and forgery,	Suffolk,	Lawful and in proper form.
July 3	New York,	Gilbert and Harry Thompkins and Charles Murray,	Robbery,	Hampden,	Lawful and in proper form.
July 10	New York,	Walter Place,	Abandoning wife and child,	Hampden,	Lawful and in proper form.
July 18	New York,	Tony De Marco,	Larceny,	Suffolk,	Lawful and in proper form.
July 19	Missouri,	Everett Hornecker, <i>alias</i> ,	Desertion,	Essex,	Lawful and in proper form.
July 20	Maine,	Hugo Vento,	Larceny,	Essex,	Lawful and in proper form.
July 24	Pennsylvania,	Frank Townsend,	Larceny,	Essex,	Lawful and in proper form.
July 29	New York,	William C. Clark,	Lewd and lascivious cohabitation,	Suffolk,	Lawful and in proper form.

Date of Reference.	State or Country upon whose Executive Requisition was made.	Name of Fugitive.	Crime charged.	Venue of Prosecution.	Report.
1912.					
Aug. 1	New Jersey, . . .	Anthony Mazachia, . . .	Abandonment, . . .	Middlesex, . . .	Lawful and in proper form.
Aug. 2	New Hampshire, . . .	Peter George, . . .	Larceny, . . .	Plymouth, . . .	Lawful and in proper form.
Aug. 7	Florida, . . .	John Potterton, . . .	Desertion, . . .	Essex, . . .	Lawful and in proper form.
Aug. 9	Rhode Island, . . .	Louis Conlon, <i>alias</i> , . . .	Larceny, . . .	Essex, . . .	Lawful and in proper form.
Aug. 28	New York, . . .	William Buck, . . .	Escaped prisoner, . . .	Middlesex, . . .	Lawful and in proper form.
Aug. 28	Pennsylvania, . . .	Francesco Rosa, . . .	Murder, . . .	Norfolk, . . .	Lawful and in proper form.
Aug. 29	Colorado, . . .	Albert C. Jahl, . . .	Unlawfully selling mortgaged property, . . .	Suffolk, . . .	Lawful and in proper form.
Aug. 30	New York, . . .	Clarence J. Fares, . . .	Desertion and nonsupport, . . .	Berkshire, . . .	Lawful and in proper form.
Sept. 5	New Hampshire, . . .	Joseph C. Harding, . . .	Nonsupport, . . .	Middlesex, . . .	Lawful and in proper form.
Sept. 16	California, . . .	Domenico Beninato, . . .	Murder, . . .	Middlesex, . . .	Lawful and in proper form.
Sept. 19	New York, . . .	Albert Hicks, . . .	Larceny, . . .	Berkshire, . . .	Lawful and in proper form.
Sept. 20	New York, . . .	Michael J. Kelly, . . .	Desertion, . . .	Middlesex, . . .	Lawful and in proper form.
Sept. 23	Connecticut, . . .	Fred Lloyd, . . .	Robbery, . . .	Suffolk, . . .	Lawful and in proper form.
Sept. 25	Maine, . . .	Frank E. Thompson, . . .	Larceny, . . .	Suffolk, . . .	Lawful and in proper form.
Sept. 27	New York, . . .	William D. Laganas, . . .	Larceny, . . .	Suffolk, . . .	Lawful and in proper form.
Oct. 2	New York, . . .	Carl van Leekwyck, . . .	Forgery, . . .	Plymouth, . . .	Lawful and in proper form.
Oct. 4	New York, . . .	Abraham Goldstein, . . .	Larceny, . . .	Suffolk, . . .	Lawful and in proper form.
Oct. 14	New York, . . .	Max Shienberg, . . .	Conspiracy, . . .	Middlesex, . . .	Lawful and in proper form.
Oct. 16	Maine, . . .	Vernon H. Foster, . . .	Desertion, . . .	Middlesex, . . .	Lawful and in proper form.

Oct.	17	New York,	.	.	.	John O'Neil, <i>alias</i> ,	.	.	.	Stealing,	.	Hampden,	Lawful and in proper form.
Oct.	23	New York,	.	.	.	Robert C. Davis,	.	.	.	Nonsupport of wife and children,	.	Suffolk,	Lawful and in proper form.
Oct.	26	New York,	.	.	.	Alberto Ranaldo,	.	.	.	Forgery,	.	Suffolk,	Lawful and in proper form.
Oct.	31	New York,	.	.	.	Philip Pucci,	.	.	.	Escaped prisoner,	.	Suffolk,	Lawful and in proper form.
Oct.	31	New York,	.	.	.	L. Wallace,	.	.	.	Forgery,	.	Norfolk,	Lawful and in proper form.
Nov.	11	New York,	.	.	.	Cornelius Dunn,	.	.	.	Larceny,	.	Suffolk,	Lawful and in proper form.
Nov.	13	New York,	.	.	.	Edwin J. Deyereaux,	.	.	.	Forgery,	.	Suffolk,	Lawful and in proper form.
Nov.	21	New York,	.	.	.	Samuel McGlinchey, <i>alias</i> ,	.	.	.	Larceny,	.	Suffolk,	Lawful and in proper form.
Dec.	9	New York,	.	.	.	Arthur Wing,	.	.	.	Desertion,	.	Middlesex,	Lawful and in proper form.
Dec.	9	New York,	.	.	.	Patrick Henry,	.	.	.	Escaped prisoner,	.	Suffolk,	Lawful and in proper form.
Dec.	10	New Jersey,	.	.	.	Joseph W. Stetson,	.	.	.	Arson,	.	Middlesex,	Lawful and in proper form.
Dec.	10	New Jersey,	.	.	.	Ray S. Breslin,	.	.	.	Arson,	.	Middlesex,	Lawful and in proper form.
Dec.	24	New York,	.	.	.	Glen F. Farmer,	.	.	.	Larceny,	.	Suffolk,	Lawful and in proper form.

The following requisitions upon His Excellency the Governor for the surrender of fugitives from the justice of other States have been referred by him to this department during the year ending Dec. 31, 1912, for examination and report thereon: —

Date of Reference.	State making the Requisition.	Name of Fugitive.	Crime charged.	Report.
1912.				
Feb. 17	Arkansas,	R. F. Locke,	Grand larceny,	Lawful and in proper form.
Feb. 19	Illinois,	Perry Bradford,	Assault with intent to kill,	Lawful and in proper form.
Feb. 21	New Hampshire,	Abraham Jacobson,	Gambling,	Lawful and in proper form.
March 1	Colorado,	Sidney E. Balcorn,	Larceny,	Lawful and in proper form.
March 13	New York,	Harry Wm. Garfinkle,	Abandonment of children,	Lawful and in proper form.
April 1	New York,	Cornelius Peterman,	Rape,	Lawful and in proper form.
May 17	Vermont,	Grace E. Cross, <i>alias</i> ,	Bigamy,	Lawful and in proper form.
June 20	Ohio,	John E. Quinn,	Sodomy,	Lawful and in proper form.
June 21	Illinois,	James Stroinsider,	Confidence game,	Lawful and in proper form.
July 26	New Hampshire,	Henry Elpert,	False pretences,	Lawful and in proper form.
Aug. 12	Pennsylvania,	Mildred Cartledge,	Felonious assault,	Lawful and in proper form.
Aug. 14	New Jersey,	Frederick Baunan,	Breaking and entering,	Lawful and in proper form.

RULES OF PRACTICE

IN INTERSTATE RENDITION.

Every application to the Governor for a requisition upon the executive authority of any other State or Territory, for the delivery up and return of any offender who has fled from the justice of this Commonwealth, must be made by the district or prosecuting attorney for the county or district in which the offence was committed, and must be in duplicate original papers, or certified copies thereof.

The following must appear by the certificate of the district or prosecuting attorney:—

(a) The full name of the person for whom extradition is asked, together with the name of the agent proposed, to be properly spelled.

(b) That, in his opinion, the ends of public justice require that the alleged criminal be brought to this Commonwealth for trial, at the public expense.

(c) That he believes he has sufficient evidence to secure the conviction of the fugitive.

(d) That the person named as agent is a proper person, and that he has no private interest in the arrest of the fugitive.

(e) If there has been any former application for a requisition for the same person growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such application, as near as may be.

(f) If the fugitive is known to be under either civil or criminal arrest in the State or Territory to which he is alleged to have fled, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

(g) That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever; and that, if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

(*h*) The nature of the crime charged, with a reference, when practicable, to the particular statute defining and punishing the same.

(*i*) If the offence charged is not of recent occurrence, a satisfactory reason must be given for the delay in making the application.

1. In all cases of fraud, false pretences, embezzlement or forgery, when made a crime by the common law, or any penal code or statute, the affidavit of the principal complaining witness or informant that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes, shall be required, or a sufficient reason given for the absence of such affidavit.

2. Proof by affidavit of facts and circumstances satisfying the Executive that the alleged criminal has fled from the justice of the State, and is in the State on whose Executive the demand is requested to be made, must be given. The fact that the alleged criminal was in the State where the alleged crime was committed at the time of the commission thereof, and is found in the State upon which the requisition was made, shall be sufficient evidence, in the absence of other proof, that he is a fugitive from justice.

3. If an indictment has been found, certified copies, in duplicate, must accompany the application.

4. If an indictment has not been found by a grand jury, the facts and circumstances showing the commission of the crime charged, and that the accused perpetrated the same, must be shown by affidavits taken before a magistrate. (A notary public is not a magistrate within the meaning of the statutes.) It must also be shown that a complaint has been made, copies of which must accompany the requisition, such complaint to be accompanied by affidavits to the facts constituting the offence charged by persons having actual knowledge thereof, and that a warrant has been issued, and duplicate certified copies of the same, together with the returns thereto, if any, must be furnished upon an application.

5. The official character of the officer taking the affidavits or depositions, and of the officer who issued the warrant, must be duly certified.

6. Upon the renewal of an application, — for example, on the ground that the fugitive has fled to another State, not having been found in the State on which the first was granted, — new or certified copies of papers, in conformity with the above rules, must be furnished.

7. In the case of any person who has been convicted of any crime, and escapes after conviction, or while serving his sentence, the application may be made by the jailer, sheriff, or other officer having him in custody, and shall be accompanied by certified copies of the indictment or information, record of conviction and sentence upon which the person is held, with the affidavit of such person having him in custody, showing such escape, with the circumstances attending the same.

8. No requisition will be made for the extradition of any fugitive except in compliance with these rules.





